

SITING COMMITTEE WORKSHOP
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:) Docket 00-SIT-2
)
Examining Critical Issues in) TIMING OF FEDERAL
the Licensing of Thermal) PERMITS THAT MAY
Power Plants and Related) CONSTRAIN SITING OF
Facilities) NEW POWER PLANTS
-----)

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
HEARING ROOM A
SACRAMENTO, CALIFORNIA

TUESDAY, MARCH 27, 2001

10:10 A.M.

Reported by:
Valorie Phillips
Contract No. 150-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Laurie, Presiding Member

Robert Pernell, Associate Member

Scott Tomashefsky

Ellen Townsend-Smith

STAFF PRESENT

Chris Tooker

Richard Buell

Monica Schwebs

ALSO PRESENT

Dr. Gary Meunier

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Consultant to California Energy Commission

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Ann H. Lyons, Counsel

United States Environmental Protection Agency

Susan P. Jones

United States Fish and Wildlife Service

Brian Mulvey

National Marine Fisheries Service

John P. Grattan, Attorney

Grattan & Galati

Gary Winters

Caltrans

Nancy Werdel

Western Area Power Administration

Duane Marti

Bureau of Land Management

Bob Hawkins

USDA Forest Service

ALSO PRESENT

Stephen V. Quesenberry
California Indian Legal Services

Valerie Red-Horse
Native Nations Securities

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I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1,3
Overview	2
 Presentations	 5
CEC Staff Paper Overview	5
Panel 1, Regulatory Approvals and Process	12
Steven Barhite and Ann Lyons, USEPA	12
Susan Jones, USFWS	34
Brian Mulvey, NMFS	59
John Grattan, Grattan & Galati	72
Gary Winters, Caltrans	92
Afternoon Session	116
Introductions	116
Panel 2, Interconnection and Land Use Approvals	117
Nancy Werdel, WAPA	117
Duane Marti, BLM	130
Bob Hawkins, USFS	130
Stephen Quesenberry, California Indian Legal Services	153
Monica Schwebs and Richard Buell, CEC Staff	169
Public Comment	180
Valerie Red-Horse, Native Nations Securities	180

I N D E X

	Page
Closing Remarks	183
Adjournment	183
Certificate of Reporter	184

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1 P R O C E E D I N G S

2 10:10 a.m.

3 PRESIDING MEMBER LAURIE: Ladies and
4 gentlemen, good morning, my apologies for being
5 late. It's very rude. There's stuff going on, so
6 I understand, as I read in the papers.

7 Welcome to our continuing workshops on
8 the subject of potential barriers to the licensing
9 of power plants. And this is the last of our
10 workshops. Following this we will be preparing a
11 report that will be issued sometime as soon as the
12 energy crisis passes.

13 Today we're going to talk about the
14 Energy Commission process as it relates to federal
15 issues and federal permitting, and the
16 coordination of such. Mr. Tooker.

17 DR. TOOKER: Thank you. Good morning,
18 Commissioner Laurie and Commissioner Pernell.

19 PRESIDING MEMBER LAURIE: Well, I'm
20 sorry, let me interrupt a minute, Chris. Let me
21 introduce the dais. To my right is Commissioner
22 Robert Pernell, my colleague on the Siting
23 Committee. And to Commissioner Pernell's right is
24 Commissioner Pernell's assistant and Adviser,
25 Ellie Townsend-Smith. And my name is Robert

1 Laurie, Commissioner at the Energy Commission,
2 Presiding Member of the Commission's Siting and
3 Environmental Policy Committee.

4 Okay, Mr. Tooker.

5 DR. TOOKER: Thank you. Before we go
6 any further I would advise all of you to speak
7 directly into the microphones to make sure that we
8 pick up --

9 PRESIDING MEMBER LAURIE: We paid \$12
10 billion for an ineffectual communication system,
11 so you have to get intimate.

12 DR. TOOKER: I am the Commission's
13 Siting Policy Program Manager, and I'm here today
14 to assist Rick Buell, who is the Project Manager
15 assisting the Committee in its hearing process.
16 Rick has strategically lost his voice at just the
17 right time, so I've reallocated my priorities for
18 the day.

19 I'm very encouraged to see that we have
20 a very good representation here of a number of
21 agencies, as well as the development community, to
22 speak about coordination of federal and state
23 permitting.

24 And I'd wanted to point out that we did
25 circulate a revised staff paper on coordination of

1 federal and state permitting on March 15th to
2 follow up on an original draft that we sent out
3 that we felt hadn't been adequately focused. And
4 so we sent out a revised paper, and I think better
5 focused on the progress we've made in addressing
6 coordination issues, as well as the remaining
7 areas that we need to focus on to facilitate both
8 federal and state permitting.

9 I'd like to start off with
10 introductions, and then we will have a short
11 presentation and summary of the staff paper
12 following that.

13 If we could start with Steven Barhite.

14 MR. BARHITE: Hi, my name is Steven
15 Barhite. I work at the Environmental Protection
16 Agency, Region IX in San Francisco.

17 MS. LYONS: My name is Ann Lyons. I
18 also work at the Environmental Protection Agency
19 Office in San Francisco, and I'm in the Office of
20 Regional Counsel there.

21 MR. GRATTAN: And my name is John
22 Grattan. I'm with the lawfirm Grattan and Galati,
23 and we represent applicants before the Commission.

24 DR. MEUNIER: I'm Gary Meunier with
25 Aspen Environmental Group, Consultant to the

1 Commission, helping them with the issue paper and
2 workshop.

3 MR. WINTERS: And I'm Gary Winters; I'm
4 the Acting Division Chief for Division of
5 Environmental Analysis at Caltrans.

6 MS. JONES: And I'm Susan Jones with the
7 U.S. Fish and Wildlife Service. I'm a Biologist
8 that has worked on some of the permitting projects
9 that have come through here recently on power
10 plants.

11 MR. MULVEY: I'm Brian Mulvey with
12 National Marine Fisheries Service in the Santa
13 Rosa Office. And I've been involved with Potrero
14 and now with this expediting of siting projects.

15 PRESIDING MEMBER LAURIE: Thank you,
16 Brian.

17 DR. TOOKER: Thank you very much and
18 welcome to all of you, and thank you for coming
19 and being here for this dialogue.

20 I wanted to point out a few things.
21 First of all, if any of you do have written
22 presentations that you have not yet provided a
23 copy of to Rick Buell, if you could do sometime
24 after this panel discussion, so we can provide
25 that for the record.

1 We will be having a panel discussion
2 this morning regarding regulatory approvals and
3 the process. And then a panel discussion this
4 afternoon on interconnection and land use
5 approvals.

6 And we have asked the speakers to speak
7 in general to the questions attached to the Siting
8 Committee notice. There were two different
9 issues, and the one we will be discussing this
10 morning is what conflicts exist between the Energy
11 Commission siting process and federal permit
12 processes.

13 And with that, I would ask Gary Meunier
14 to provide a short summary of the staff background
15 paper. Gary.

16 DR. MEUNIER: The background paper, the
17 issue paper takes a broad look at the variety of
18 federal permits potentially involved in the siting
19 process for power plants in California.

20 It attempts to focus on those areas that
21 could pose potential problems in the siting
22 process, and ultimately for power plant
23 construction and operation. We were mainly
24 looking at the 12-month permitting process.

25 First, I'd like to talk a little bit

1 about, provide a little overview of the federal
2 permits. A wide variety of federal permits and
3 administering agencies for those permits are
4 involved in the siting, construction and operation
5 of power plants. These are summarized in table 1
6 of the issue paper.

7 After looking at all of the permits we
8 highlighted five basic categories of the federal
9 permitting processes with the most potential for
10 constraining the siting, construction and
11 operation of power plants.

12 These include first, permit processes
13 under the Endangered Species Act, primarily under
14 section 7, which may require consultation with the
15 Fish and Wildlife Service, or the National Marine
16 Fisheries Service, and the issuance of a
17 biological opinion.

18 Second, prevention of significant
19 deterioration, that is PSD, permits under the
20 Clean Air Act. Which may require a permit from
21 the U.S. Environmental Protection Agency, the EPA,
22 or review and concurrence by EPA. And which are
23 subject to appeal to the USEPA's Environmental
24 Appeals Board.

25 Third, National Pollutant Discharge

1 Elimination System, NPDES, permits. These are
2 issued by the Regional Water Quality Control
3 Boards, but subject to changing regulations at the
4 federal level under EPA.

5 Fourth, we looked at federal land use
6 entitlements as a general category. These may be
7 required for rights-of-way and special use permits
8 for pipelines and transmission lines or other
9 facilities.

10 Typically these kinds of permits would
11 be required from Bureau of Land Management or the
12 Forest Service where lands administered by those
13 agencies are involved.

14 We also noted that interstate pipelines
15 and transmission lines may require permits from
16 the Federal Energy Regulatory Commission, FERC, or
17 the Western Area Power Administration, WAPA. All
18 of these may require environmental impact
19 statements which are similar in length and
20 complexity to the AFC staff assessments.

21 And fifth, we looked at the permitting
22 requirements related to Indian Reservations,
23 Tribal Treaty Rights, and Native American concerns
24 where these may be involved on some projects.
25 These also may require a federal EIS under the

1 National Environmental Policy Act, and/or
2 extensive Native American consultation.

3 Having looked at these federal
4 permitting areas, some of the key issues of
5 concern or opportunities for improving the
6 permitting processes included the issue of
7 application completeness with respect to such
8 factors as firmness of the project definition,
9 reasonable consideration of environmental
10 constraints and permit requirements up front, and
11 early development of mitigation measures.

12 Other issues of concern are potential
13 delays in the review and analysis of application
14 materials and further development of mitigation
15 measures.

16 Now, such delays could occur due to
17 agency workloads and staffing limitations, changes
18 in priorities at the agencies, staff reassignments
19 or breakdowns in coordinations of schedules.

20 A third area was changes in law or
21 regulation at the federal level can introduce
22 uncertainties and delays in permit processing.

23 A fourth area is the appeals processes
24 that may be involved in the appeal of permit
25 decisions. An example that we highlighted was the

1 EPA's Environmental Appeals Board appeals
2 processes which can delay projects, somewhat
3 indefinitely, depending on the appeal issues.

4 Finally, we looked at the potential for
5 delays in the permitting of pipelines and
6 transmission lines over the long term. This may
7 negatively impact the operation of permitted power
8 plants.

9 And that's basically a summary of the
10 issue paper.

11 PRESIDING MEMBER LAURIE: Gary, the
12 points raised in the staff paper, and the
13 notations to the various federal permits, these
14 are not permits unique to power plants, that is
15 the federal government doesn't have a state power
16 plant regulation section.

17 These are development permits,
18 applicable to any and all kinds of development
19 that may be subject to them, is that right?

20 DR. MEUNIER: That is basically correct.
21 These are all permit processes that would be
22 applicable to almost any significantly sized
23 industrial facility. So it's not specific to
24 power plants.

25 PRESIDING MEMBER LAURIE: Okay. So one

1 question that we'll be interested in talking about
2 is what is unique about power plants, as might be
3 applicable to the implementation of federal
4 regulations. Or is it development is development
5 is development, and it's a question of
6 development-wide response to federal regs.

7 And I don't know the answer to that, but
8 certainly --

9 DR. MEUNIER: Well, I think one thing
10 that is unique is the fact that we have this state
11 regulatory program that is very comprehensive, and
12 which has sort of parallel requirements in a lot
13 of cases, also has the requirement for compliance
14 with laws, ordinances, regulations and standards.

15 And that, to me, does provide a lot of
16 opportunity for coordinating permitting, much more
17 so than say a mining project or something that's
18 proposed on federal land.

19 PRESIDING MEMBER LAURIE: Fine, thank
20 you very much. Commissioner Pernell, did you have
21 any questions of --

22 COMMISSIONER PERNELL: No.

23 PRESIDING MEMBER LAURIE: -- Mr.
24 Meunier?

25 COMMISSIONER PERNELL: Thank you.

1 PRESIDING MEMBER LAURIE: Thank you.

2 DR. TOOKER: In introducing the next
3 speaker I just wanted to say that previous to the
4 job that I currently have, I, for many years,
5 served as the supervisor of the power plant siting
6 division's air quality unit. And in that role,
7 worked very closely with EPA in the power plant
8 siting process.

9 And wanted to take a moment to reflect
10 on the significant contributions I believe that
11 EPA has made, especially in our deregulated
12 electricity environment. They very early on
13 recognized the importance of participating in our
14 process to identify and resolve issues that were
15 pertinent to their federal permits.

16 And they have lent us great support in
17 terms of providing guidances to air districts
18 regarding our state permits, and the coordination
19 of those. And I have had the opportunity to work
20 with Steven and other staff within the stationary
21 source permitting office, or whatever the exact
22 title is, --

23 MR. BARHITE: Close enough.

24 DR. TOOKER: Close enough. And I did
25 want to express my personal appreciation for all

1 the work that they have done and that Ann has done
2 in supporting us on legal issues that have arisen,
3 and issues regarding process and the coordination
4 of the federal process in the implementation of
5 federal requirements through air districts at the
6 local level. They've been a great assistance to
7 us in that respect.

8 And I believe Steven will be speaking
9 today and Ann, perhaps both, in the context of the
10 experiences that we've shared I'd say over the
11 last four years or so.

12 Steven.

13 MR. BARHITE: Actually, I think Ann's
14 going to start off with a general overview of just
15 what goes on at EPA and what our various
16 permitting processes involve, because they are
17 complicated and there's some confusion.

18 PRESIDING MEMBER LAURIE: That will be
19 helpful, thank you.

20 MS. LYONS: Actually I'm going to limit
21 those remarks to the Clean Air Act. Steven and I
22 are both in the air division, and so I think that
23 that's where the focus is today anyway.

24 And I guess my comments arise mostly
25 from reading the paper. We have a sort of more

1 expansive view of what the meaning of a federal
2 permit is, and that's why I wanted to make just a
3 few remarks about the Clean Air Act permitting
4 schemes.

5 I'd say you could break it into federal
6 permits and federally issued permits. And to go
7 back, we have the SIP process under the Clean Air
8 Act. So that means that districts who have SIP-
9 approved permitting rules are issuing permits that
10 we consider federal permits. They're issuing them
11 under their own authority; they have their own
12 review procedures, but we consider that a
13 federally enforceable permit, and therefore we
14 have some oversight of that.

15 And then on the other hand there are
16 certain permits that are federally issued, such as
17 the PSD permits in some cases, and PSD permits
18 delegated to districts in some cases.

19 Now, I'll back up to the beginning of my
20 remarks.

21 PRESIDING MEMBER LAURIE: Well, one of
22 our workshops was on air, --

23 MS. LYONS: Okay.

24 PRESIDING MEMBER LAURIE: -- and one of
25 the questions of the districts was who do you all

1 work for. And I think they responded, but I'm not
2 sure. So, there is some schizophrenia --

3 MS. LYONS: Well, they're in a bit of a
4 tough position because they are satisfying the
5 mandates of both the California Clean Air Act and
6 the federal Clean Air Act, which are not always
7 parallel.

8 PRESIDING MEMBER LAURIE: They're state
9 agencies, though, right?

10 MS. LYONS: They are state agencies, but
11 then when we approve their state implementation
12 plans, part of our review is that they have
13 adequate legal authority, funding, all of that
14 sort of thing, so that then they become entities
15 that we have approved to issue permits that are
16 required under the Clean Air Act.

17 COMMISSIONER PERNELL: I'm sorry, let me
18 ask a question on procedure. In the scenario that
19 you just laid out where an air district might
20 approve an air permit that is the jurisdiction of
21 EPA, USEPA, in that scenario what happens? Do you
22 then contact them, slap their hand, put everything
23 on hold, or what happens in that scenario?

24 MS. LYONS: Well, there are actually a
25 variety of remedies, of potential remedies when

1 they go ahead and issue a permit that we do not
2 approve of.

3 One would be to take a direct
4 enforcement action against the source that
5 constructs for constructing without a valid
6 permit. There's also a procedure where we can
7 withdraw the permitting program from the state and
8 take over the permitting federally.

9 MR. BARHITE: That's not a common thing.

10 MS. LYONS: Not that it's ever happened.

11 MR. BARHITE: I don't think it's ever
12 happened, so.

13 COMMISSIONER PERNELL: I could
14 understand that. I guess my concern is that if we
15 go down that road, whether the applicant is aware
16 of not, and especially as it relates to the power
17 plants. If we go down that road we wouldn't want
18 to, at least I wouldn't envision the whole project
19 being on hold if we are in some sort of emergency
20 situation where we're trying to get these projects
21 up and providing power to California.

22 MS. LYONS: Right, I think it's very
23 important to make them aware of the fact that we
24 have the oversight and enforcement role for the
25 federal Clean Air Act, as it's implemented through

1 the state implementation plan.

2 And, you know, I guess our basic message
3 is for expediting things, permits, both the
4 federal permits and the federally issued permits,
5 the best thing to do is to come in, you know, with
6 everything. Not to try to get creative or cut
7 corners. And, you know, I'm sure you've heard
8 that message.

9 COMMISSIONER PERNELL: Thank you.

10 MS. LYONS: But let me give you just a
11 little bit more of an overview if you don't have
12 any further questions, and that is just the Clean
13 Air Act is broken into attainment pollutants and
14 nonattainment pollutants.

15 And for attainment -- let me start with
16 nonattainment. For nonattainment pollutants the
17 districts are required to have a permitting
18 program of their own approved into the state
19 implementation plan. There's a sanction for that
20 if they don't. It's like a construction
21 moratorium and a FIP. So they're fairly Draconian
22 sanctions, and all the districts in California do
23 have --

24 PRESIDING MEMBER LAURIE: So is that the
25 first question you ask when you go to the issue of

1 federal regulatory schemes in air? Is the first
2 question you ask, are you in a nonattainment or an
3 attainment zone? And then from there that
4 determines your direction?

5 MS. LYONS: Yeah, and that would be
6 easier if there were only one pollutant, but the
7 fact we have five regulated pollutants, and so you
8 can be in an area that is in nonattainment for
9 some pollutants and in attainment for other
10 pollutants.

11 PRESIDING MEMBER LAURIE: What are the
12 five regulated pollutants?

13 MS. LYONS: Ozone, which is a mixture of
14 VOCs, volatile organic compounds; and NOx, oxides
15 of nitrogen; particulate matter, PM10 we usually
16 refer to it as; SOx, oxides of sulfur; CO, carbon
17 monoxide, and I knew I was going to forget one --

18 MR. BARHITE: Lead.

19 MS. LYONS: Thank you. We don't do much
20 with lead, so. Anyway, --

21 COMMISSIONER PERNELL: I'm sorry,
22 missed one. I got ozone, NOx, --

23 MR. BARHITE: Ozone, SOx --

24 MS. LYONS: PM, particulate matter.

25 COMMISSIONER PERNELL: -- SOx, PM --

1 MR. BARHITE: Carbon monoxide and lead.
2 And realize that ozone is a VOC and NOx.

3 And Chris just pointed out, NOx is a bit
4 different. NO2 is treated, that gets a double
5 look, basically.

6 MS. LYONS: Yeah. So, you might be
7 subject -- power plants are most likely going to
8 be subject to both attainment permitting --
9 nonattainment area permitting and attainment area
10 permitting.

11 So, under the Clean Air Act the district
12 have to have permitting programs for nonattainment
13 pollutants. They're not required to have those
14 programs for attainment pollutants, which is why
15 EPA sometimes issues the PSD permits. PSD permits
16 are only for attainment pollutants.

17 And a district may have an approved PSD
18 program, in which case it will have all its own
19 administrative remedies and will again just be in
20 an oversight role, or it may have a delegated
21 program where it has a delegation agreement with
22 EPA and it's actually carrying out the federal
23 attainment area permitting program.

24 And in that case, then the appeals go to
25 our environmental appeals board, and it's treated

1 as if it's a federally issued permit.

2 MR. BARHITE: They're issuing on our
3 behalf basically.

4 MS. LYONS: Right. And then there's the
5 third category for attainment area permits which
6 is that the district has neither an approved
7 program nor a delegation agreement with us. And
8 then EPA, itself, will be issuing the permits,
9 such as in the Sutter Power Plant case. We wrote
10 the permit for the attainment pollutants in that
11 case.

12 MR. BARHITE: One thing you might be
13 thinking about right about now is in California
14 this is incredibly complicated because most states
15 in the country have one, two, maybe three
16 permitting authorities. We have over 40 in
17 California. Each of them has a slightly different
18 setup. Some of them have approved programs. Some
19 of them have delegated authority. Some want
20 neither. And each permitting authority also has
21 their own state implementation plan with their own
22 rules.

23 PRESIDING MEMBER LAURIE: And who
24 determines that? Who decided we have 40? Is that
25 CARB?

1 MR. BARHITE: Well, it's history really.

2 I think the short answer is that California was
3 kind of out in front when the air programs were
4 forming, and they had a county-by-county air
5 permitting program in place already.

6 And so when the Clean Air Act came
7 along, California already had a structure in
8 place, and they tried to lay that structure on top
9 of the Clean Air Act. And it worked. The problem
10 is that each district has a slightly different way
11 of coming into compliance with those federal
12 regulations.

13 And so it's a real challenge because a
14 power plant in the South Coast, very close to the
15 San Diego border, will be going through something
16 very different than a power plant in San Diego.
17 And so that's why it's an extra challenge here in
18 California. We really are dealing with a lot of
19 different permitting authorities, and that's
20 unique in the nation.

21 PRESIDING MEMBER LAURIE: Who has, if
22 there's some visionary who said we want to
23 coordinate the regions a little bit better, who is
24 that? And is there a capo de capo for air
25 districts or --

1 MR. BARHITE: I think that the
2 California Air Resources Board actually does play
3 that role, and they do an excellent job in that
4 role.

5 I think what their challenge is is they
6 can't request the districts to actually make those
7 rule changes. So what they do is they try to
8 coordinate as much as possible. And when
9 something like the present situation comes along,
10 they've done an excellent job of trying to come up
11 with measures that can be applied across the state
12 without having to get into issues of local
13 jurisdiction. Allowing them to keep their
14 authority, but somehow coordinating their
15 activities.

16 And I think that's the challenge they've
17 been trying to meet, and I think they've been
18 doing a good job of it, too.

19 MS. LYONS: And I'd just like to add,
20 you were talking about, you know, how permits are
21 unique or not unique to the power plant situation.
22 Most of these programs, you know, grew up long ago
23 and were actually tailored to more what the local
24 stationary sources were, you know, whether they're
25 agricultural sorts of sources or, you know,

1 manufacturing sources.

2 So the idea was that it was a good thing
3 to let the state sort of choose how to regulate
4 what was a particular local interest to them, you
5 know. In this particular situation it's looking
6 more like just, you know, too much of a quagmire,
7 but --

8 MR. BARHITE: So, I guess maybe just to
9 sum up what we just said, there are basically two
10 programs. One is attainment, and that's basically
11 to make sure that your clean air stays clean.

12 We also have a nonattainment program,
13 that's to make sure that your dirty air becomes
14 cleaner over time. The nonattainment programs are
15 administered by the districts, and they have rules
16 in their state implementation plan that guide them
17 in that.

18 Then there's the PSD program, the
19 attainment program. And there are basically three
20 options there. The federal government can issue
21 the permits directly and that happens in some of
22 the smaller districts around California.

23 The districts can be delegated authority
24 to issue the permit on behalf of the federal
25 government. That's actually fairly common,

1 especially in the larger districts like the Bay
2 Area and South Coast.

3 And then there are a few districts where
4 they've actually incorporated that program into
5 their state implementation plan. And I think
6 Monterey might be one example. There are very few
7 of those in California, though.

8 MS. LYONS: And then to add onto that,
9 where you get the requirements for compliance with
10 section 7 of the Endangered Species Act and also
11 where you have the potential of having
12 environmental appeals board procedures kick in,
13 are only in the federally issued permits, which
14 are the PSD permits by either delegated district
15 or by EPA.

16 So just to try to, you know, lay out the
17 universe there a little bit.

18 And I'd like to make a couple of side
19 points, and one is the paper here refers to
20 mitigation quite a bit, and that's actually not a
21 term we use much in the Clean Air Act, which is,
22 you know, kind of unusual.

23 But the Clean Air Act really focuses on
24 technology and offsets. So, what we're really
25 looking for, I mean that is mitigation for us.

1 That they have the best available control
2 technology, and that they offset any additions of
3 nonattainment pollutants caused by the project.

4 So we're not -- I guess my point is it
5 seems to me it's a less subjective determination
6 than you get in a lot of the statutes that rely on
7 mitigating impacts. Because here we have, you
8 know, concrete requirement for the technology and
9 for the offsets. And it's not as if we can have a
10 little less stringent technology if we get more
11 offsets or something like that. It's both those
12 requirements.

13 MR. BARHITE: And maybe here is a good
14 time just to mention some of the efforts that
15 we've seen in those two areas over the past few
16 years.

17 I think when we first saw the power
18 plants coming into the state one of the big
19 questions and discussions that we had revolved
20 around that technology requirement. What is the
21 cleanest technology that should be used here.

22 There were some new emerging
23 technologies that were proven, but there was a lot
24 of discussion about whether they were appropriate.
25 So the first power plants that went through the

1 process, a lot of the debate focused on that
2 control technology.

3 This is actually where ARB did a great
4 job. They, as this discussion continued on, they
5 actually produced their power plant siting
6 guidelines where they put down what they thought
7 the minimum control technology should be. And
8 they worked a lot with EPA and the districts on
9 that.

10 So I think the first few years the focus
11 was really on technology and the ARB did a good
12 job of summing up that conversation and putting it
13 in writing so that people at least had an idea of
14 what was expected. And I think that part of the
15 equation has been much easier now.

16 I think now the real challenge has been
17 in the offset area. There's been a lot of new
18 activity in the state, and obtaining offsets for
19 these projects has proven to be the new challenge.
20 And that's what people are focusing on right now.

21 So, we've seen that shift a little bit
22 over time. But I think that there was a lot of
23 coordination that went on, I think a really good
24 effort to kind of nail that technology part down.
25 And so now the challenge is offsets.

1 PRESIDING MEMBER LAURIE: Would you care
2 to take a minute and talk about what you're
3 thinking about regarding offsets?

4 MR. BARHITE: Well, I think at the last
5 workshop I think you covered that in more detail.
6 But I guess what we're seeing now is, Ann
7 mentioned earlier that when people get creative,
8 with quotation marks around it, it does slow the
9 process down.

10 And so I guess what our job has been is
11 to try to encourage people to go out and find a
12 reasonable strategy to obtain offsets. We've seen
13 some things that are very difficult to true up
14 with the Clean Air Act. And so there's a couple
15 different strategies that we're looking at.

16 The first one, I think, and the one we
17 encourage the most is for people to go out and
18 look for additional sources that could be over
19 controlled. That doesn't always work in all
20 places, so we've had to look at other options.

21 And I assume that you went over some of
22 those options at the last workshop.

23 PRESIDING MEMBER LAURIE: Yes.

24 MR. BARHITE: Okay.

25 MS. LYONS: And, again, you have -- oh,

1 I'm sorry.

2 PRESIDING MEMBER LAURIE: Go ahead, Ann.

3 MS. LYONS: I was just going to say you
4 have on your paper early identification of
5 mitigation measures as being one recommendation.
6 I saw that someplace. And I think early
7 identification of offsets should, you know, it's
8 not mitigation really, but the people who start
9 early and kind of look at the site and say, what
10 around here can I find offsets from, are going to
11 have a much better time of getting actually
12 getting the right kind of offsets.

13 MR. BARHITE: Maybe I can give you an
14 example of where this works. Again, you probably
15 discussed this last week, but I think it's worth
16 highlighting.

17 People have been talking a lot about
18 mobile source credits that could be used for
19 stationary source offsets. In general that's not
20 been something that we've been able to true up
21 with the Clean Air Act. It's difficult to do.

22 But, I think in one instance it worked
23 very well, and that was with Otay Mesa in San
24 Diego. And there the applicant worked very hard
25 with the districts, ARB, the Energy Commission and

1 EPA to come up with, it was a very good permit.
2 And all of the little details that, you know, were
3 problematic, were all spelled out very clearly in
4 the permit.

5 And that's a case where I think they
6 took a creative approach, and they really backed
7 that up with, you know, a good effort to make it
8 work.

9 The problem is that same approach won't
10 work just across the line in South Coast, which
11 has a much longer attainment horizon coming up.
12 They're working on some mobile source strategy for
13 South Coast, but they have to be very different
14 than Otay Mesa.

15 And so again, that goes back to that
16 challenge of how each different area in California
17 has to be treated differently.

18 San Diego had a very short attainment
19 horizon, and so the limited duration of those
20 mobile source credits worked there. And across
21 the border in South Coast, their attainment
22 horizon is a long way off. And the limited
23 lifespan of those mobile source credits would not
24 work there.

25 And so that's what we're trying to do is

1 match up the strategy with the appropriate
2 circumstances.

3 PRESIDING MEMBER LAURIE: Good, thank
4 you very much.

5 MS. LYONS: Okay, can I add one more
6 thing?

7 PRESIDING MEMBER LAURIE: I'm sorry?

8 MS. LYONS: I was going to add one more
9 thing --

10 PRESIDING MEMBER LAURIE: Yes.

11 MS. LYONS: -- just in responding to
12 your questions here. I do actually have something
13 to report, and this is regarding the EAB, the
14 Environmental Appeals Board timing issue.

15 After the Sutter Power Plant appeal our
16 Environmental Appeals Board did actually draft an
17 issue procedures for dealing with appeals on an
18 expedited basis, if they were frivolous, you know,
19 if they should just be dismissed like, you know,
20 they concluded the Sutter was that kind of an
21 appeal.

22 And so I just wanted people to be aware
23 of that, that since June 30, 2000, they've had
24 this guidance on it. And what that means to me is
25 if you want to avoid the delay in a PSD EAB

1 appeal, make sure you get a really good permit and
2 that you've done everything right. Because then
3 there's no way they can bring anything that
4 shouldn't be expeditiously dismissed.

5 PRESIDING MEMBER LAURIE: And does that
6 include EJ issues?

7 MS. LYONS: No. I don't think that's
8 on their list of summary disposition matters.

9 PRESIDING MEMBER LAURIE: Okay, so how
10 would you handle an environmental justice
11 allegation?

12 MS. LYONS: You know, I think you'd have
13 to first look at whether or not it was raised
14 properly. And then you'd have to look at the
15 demographics and see if any of the EAB decisions
16 that are already on record would provide a basis
17 for saying that's been decided by them.

18 So, you'd need to look at the record,
19 the demographics, how it was raised, there are a
20 number of issues. But it could, I mean I think
21 there are instances when it might be proper for
22 summary disposition under their procedures. They
23 didn't actually list out, you know, categories,
24 but there might be situations when, you know, it
25 hasn't been raised in the record properly, so it

1 could be summarily disposed of.

2 PRESIDING MEMBER LAURIE: Okay.

3 COMMISSIONER PERNELL: Does the
4 expedited appeal process apply to other topics,
5 other than air quality?

6 MS. LYONS: No, actually it's specific
7 to PSD permits, because the Environmental Appeals
8 Board recognizes that that program presents
9 exigencies not present to quite the same degree in
10 the other appeals filed with this board.

11 COMMISSIONER PERNELL: And my second
12 question, I'm not sure that you can answer this,
13 but there's also issues of endangered species
14 habitat, is that something you can answer some
15 questions on, or is there someone else from --

16 MS. LYONS: I think Susan is our expert
17 on that.

18 COMMISSIONER PERNELL: Okay, I'll wait
19 till I get around to Susan.

20 MS. LYONS: Okay.

21 COMMISSIONER PERNELL: Thank you.

22 PRESIDING MEMBER LAURIE: Thank you very
23 much.

24 Mr. Tooker.

25 DR. TOOKER: Steven, I have one question

1 as a follow-up. From what you said, really the
2 EPA in this process then has two responsibilities.
3 One is to provide oversight of the new source
4 review programs implemented by the districts, as
5 well as to implement their own PSD program unless
6 it's been delegated.

7 Could you speak a little bit about what
8 you see as the advantages, or what are the
9 overlaps between the NSR and the PSD programs in
10 terms of analysis of projects? We do a lot of in-
11 depth analysis, and we work with you, we work with
12 the districts.

13 Has that, do you think, resulted in that
14 consolidation of analysis resulted in a lot more
15 efficiency? Instead of just having these separate
16 programs going on, we have combined staff efforts.

17 MR. BARHITE: Yeah, I definitely think
18 that helps. While the two programs are very
19 different and they have very different goals, we
20 mentioned that in terms of oxides of nitrogen
21 there's kind of a double counting.

22 Most areas in California are
23 nonattainment for ozone. There are some areas
24 that are attainment for NOx, though. And so NOx
25 will often fall under the PSD portion of the

1 program, while ozone will be administered under
2 the nonattainment portion of the program.

3 It's very helpful when that
4 nonattainment analysis is done, because the PSD
5 portion often relies on that. The requirements in
6 the nonattainment program are much more stringent,
7 and so usually if you're satisfying those
8 requirements, the PSD follows very easily after
9 that.

10 In most of these projects what we're
11 seeing is that the -- if the analysis for the
12 nonattainment portion that the district is doing
13 is good, and it usually is good, the PSD permit
14 will often come very quickly after that, because
15 it can rely very heavily on that analysis.

16 And so I do think if you do a good job
17 on the nonattainment part, the PSD part can come
18 very easily after.

19 DR. TOOKER: Thank you. Any other
20 questions for EPA?

21 PRESIDING MEMBER LAURIE: Lots of air
22 questions, but we're going to have to save it.
23 Thanks. And, Chris, when this is over I'm going
24 to ask you to explain to me what the role of local
25 districts is vis-a-vis the federal government, and

1 our siting process.

2 Because after four years I still don't
3 understand it.

4 DR. TOOKER: We'll talk. Thank you very
5 much.

6 MS. LYONS: EPA does give them grant
7 money. Does that help?

8 PRESIDING MEMBER LAURIE: To start, you
9 bet. Thank you.

10 DR. TOOKER: Our next speaker is Susan
11 Jones with the United States Fish and Wildlife
12 Service. Susan.

13 PRESIDING MEMBER LAURIE: Welcome, Ms.
14 Jones.

15 MS. JONES: Thank you very much. Thank
16 you for inviting me here. I've really enjoyed
17 working with your staff in preparing for this
18 workshop and on other projects, as well.

19 I should just say that I work in the
20 Endangered Species Division on issues in the San
21 Joaquin Valley. So, my experience with the Energy
22 Commission is with the power plants that have
23 recently been permitted in Kern County. And I
24 worked on several of those.

25 I'm here to talk about the Endangered

1 Species Act and how it addresses power plants.
2 Our mission within the part of the Service that I
3 work in is to bring back species that have been
4 greatly reduced in numbers, and they've been
5 reduced in numbers mostly by loss of habitat. And
6 that comes from agriculture, growth of cities, and
7 industrial activities.

8 We have written, for most of our species
9 that have been listed as either threatened or
10 endangered, we have written recovery plans. And
11 in these plans we've thought about all the
12 different players and where the easiest habitat to
13 protect is, and how much habitat do we need
14 anyway. And kind of tried to put all the pieces
15 together on how all the different players living
16 in the State of California can help implement the
17 Endangered Species Act and bring it back.

18 We have two permitting processes. One
19 is referred to as section 7, the other's referred
20 to as section 10.

21 Section 7 is involved when the federal
22 agency, I think EPA has already mentioned it, when
23 a federal agency takes an action to issue a
24 permit, then they, if they are willing, can be the
25 federal nexus for the applicant and the project to

1 come to the Fish and Wildlife Service and get a
2 permit.

3 And what we require to get that permit
4 is that the project not reduce those species below
5 the present baseline we call it, or present level.
6 So we are looking for mitigation. We use that
7 word. And we often ask applicants to buy land in
8 good habitat areas to offset the footprint of the
9 project and the pipelines and the transmission
10 lines.

11 We have a regulatory deadline of 135
12 days to go through the section 7 process, once it
13 has started. That assumes that we have all the
14 information we need at 30 days. So it's 30 days
15 and then 105 days.

16 PRESIDING MEMBER LAURIE: And that the
17 needed information might include lengthy survey
18 period, for example?

19 MS. JONES: Right. And the Energy
20 Commission Staff knows all of those requirements
21 and has transmitted those to the applicant and
22 we're often working with a very well informed
23 applicant by the time, you know, they come --

24 PRESIDING MEMBER LAURIE: Could you talk
25 about that a little more? I'm aware that in many

1 cases there are comments that you cannot make a
2 determination whether or not there's a particular
3 species present until you do a year-long, because
4 some species are seasonal. And so you have to
5 wait until spring or summer or fall or winter in
6 order to do the appropriate study, is that
7 correct?

8 MS. JONES: Yes, that's correct. A lot
9 of the plants can only be identified in the spring
10 when they're flowering. And that's right now.
11 There's a lot of people, biologists out working
12 hard in Kern County right now on various projects
13 that are planned for the whole next year.

14 So there is a certain amount of lead
15 time that's required if you are putting your plant
16 on an undisturbed site.

17 If you put your plant on a site that's
18 already been used in some way, it makes the
19 process go much faster because you don't need to
20 do those surveys in as much depth or at all.

21 So if you take a preexisting industrial
22 site, and they did that at Elk Hills. They found
23 a site that had been used previously and was no
24 longer in use. The only part of it that would
25 impact species that required extensive surveys

1 were the transmission lines and the pipelines.

2 So, if you pick a site that's already
3 disturbed, greatly disturbed, then for the Service
4 that cuts down on our review time; it cuts down on
5 the processing time.

6 PRESIDING MEMBER LAURIE: Okay.

7 COMMISSIONER PERNELL: Okay, help me
8 understand this. First of all, your 135-day
9 process, approval process, that doesn't lend
10 itself to some of the Commission's siting regs or
11 emergency regs.

12 We have a six-month process, and a
13 couple other shorter processes. How would that be
14 handled? Do you have any procedure for emergency
15 siting of power plants?

16 MS. JONES: 135 days is actually the
17 maximum. I mean we can issue a permit before that
18 time if -- I guess it's technically possible.
19 We're very short staffed, so we have not actually
20 been making the 135 day deadline, even though it's
21 a --

22 COMMISSIONER PERNELL: You've been over
23 135 days?

24 MS. JONES: Yes. But, --

25 COMMISSIONER PERNELL: Well, I

1 understand being short of staff, and overworking
2 staff. Believe me, we're working very hard at the
3 Commission. So that's certainly understandable.

4 MS. JONES: Right.

5 COMMISSIONER PERNELL: The other issue
6 is if you're on an industrial site, or a disturbed
7 site, which would shorten the time and probably
8 give you a better chance of getting through your
9 process sooner, --

10 MS. JONES: Right.

11 COMMISSIONER PERNELL: -- that's
12 correct? And I want to kind of give you a
13 scenario. Well, I don't want to set you up, so
14 let me tell you what's on my mind.

15 We had a -- we being, in this case, SMUD
16 licensed a power plant at Proctor and Gamble,
17 which was an existing site. It was said that
18 there was endangered species, in this case, fairy
19 shrimp. And a picture was taken of a tire track
20 where -- are you familiar with this?

21 MS. JONES: No.

22 COMMISSIONER PERNELL: Okay, well, --

23 MS. JONES: I've heard a lot about tire
24 tracks.

25 COMMISSIONER PERNELL: -- well, an

1 indentation in the soil, and there was some water
2 in it, and evidently these little guys, you know,
3 rejuvenate during the winter months or whatever
4 they do, and because of that, a biologist, you
5 know, identified fairy shrimp in that indentation.
6 There was some mitigation and, you know, I think
7 we went over the 135 days, and et cetera.

8 Has that -- and this must have been
9 eight years ago. So, has anything changed since
10 then? Do you know, in terms of regulations, or in
11 terms of how we handle power plant footprints in
12 industrial areas?

13 MS. JONES: Well, I think with fairy
14 shrimp I do know that we've set up a lot of
15 conservation banks around the area. We have
16 nonprofit organizations that have bought land and
17 have it set aside. And then in order to pay their
18 mortgage, power plants and other industrial
19 facilities that need credits, because there are
20 fairy shrimp on their sites, buy credits in these
21 conservation banks. And it makes the mitigation
22 go much more quickly, and it's very easy, you
23 know, it's already set up. You know, it's a
24 preapproved kind of mitigation that's out there
25 that we've helped set up with these nonprofits.

1 COMMISSIONER PERNELL: Right. One of
2 the things that we're doing as a Commission is
3 trying to identify potential sites. Most of those
4 are -- well, not most of them, but some of those
5 are on industrial areas because we think it's
6 more, in terms of the land use, you know, it's
7 more conducive to do it that way.

8 And I was just trying to get some sense
9 of if we go through that process to identify
10 something on an industrial area, someone -- a
11 biologist comes out and see fairy shrimp, for
12 example, or flowers or any other endangered
13 species there, and the fact that we're identifying
14 these to expedite the process, would that hold it
15 up in any way?

16 MS. JONES: Well, my understanding is
17 that the sites that are being put forth by the
18 Energy Commission as things that could be
19 permitted quickly are sites where endangered
20 species or threatened species are not located.

21 COMMISSIONER PERNELL: Right, but we
22 wouldn't know that until the winter months in this
23 case.

24 MS. JONES: My understanding is they're
25 talking about sites that have been surveyed in the

1 past. And so we have a pretty good idea of what's
2 already there.

3 And that the whole idea was to pick
4 sites where there weren't endangered species.

5 COMMISSIONER PERNELL: And I think
6 that's correct, that is the idea. But if there's
7 a hard rain for a week, and these little guys
8 decide to rejuvenate, what happens? I mean it
9 stops the whole --

10 MS. JONES: Well, it doesn't stop the
11 whole process now because we have these
12 conservation banks set up. We'd prefer that the
13 sites not even go on there, and so we have
14 actually, the Fish and Game, California Department
15 of Fish and Game has a database of where all these
16 sightings have been seen of all the different
17 threatened and endangered species.

18 And that's actually, I think, one of the
19 recommendations we have here is to fully staff
20 them or give them some short-term staff so that
21 they can enter all the data points --

22 COMMISSIONER PERNELL: I think that
23 would be helpful --

24 MS. JONES: -- and get that going.

25 COMMISSIONER PERNELL: -- that's very

1 good.

2 MS. JONES: Because there is a lot of
3 information already out there from previous
4 activities, and it's not all in the database.

5 COMMISSIONER PERNELL: All right. Okay.

6 PRESIDING MEMBER LAURIE: So if I pick
7 parcel ABC, and it is an undeveloped parcel, for
8 the purpose of constructing a power plant, and the
9 question is, is the Endangered Species Act
10 applicable. Are there any endangered species.

11 So, one, you'd go to a database.

12 MS. JONES: Right.

13 PRESIDING MEMBER LAURIE: Two, absent
14 anything in the database, do you have to stick
15 some person out there under a tent for a year to
16 go through seasons and then that's part of your
17 environmental analysis? So if there's nothing in
18 the data bank, what more do you have to do in
19 order to determine whether or not there may be
20 some sort of endangered species on a given parcel
21 of land?

22 MS. JONES: There's the Fish and Game
23 database which has the sitings in it. And usually
24 applicants have checked that before they come to
25 us.

1 Then they can come to us and that us
2 might be NMFS as well as the Service, and we have
3 a database of habitat, really, of where we might
4 expect species to be, based on their habitats.

5 And so we issue a letter with a list of
6 potential species that could be on an undisturbed
7 plot in a particular USGS quadrangle. We base it
8 on the geological survey, 7.5 minute quadrangles.

9 PRESIDING MEMBER LAURIE: And that's
10 where the seasonal survey then comes in, so that
11 if you determine that there may be a species on
12 this given parcel, you say, well, wait until
13 spring and conduct your survey so you'll know
14 whether or not there is, in fact, in reality, the
15 presence of such a species? Is that how it works?

16 MS. JONES: In some areas there aren't
17 any species that are protected through us, and so
18 then they don't have to do surveys. In other
19 areas there might be.

20 The applicant can also assume presence,
21 if it's very close to previous sightings. And
22 then they don't have to do the surveys. They can
23 just compensate for the habitat that's being lost,
24 and proceed with their project.

25 The surveys are not necessarily

1 required. The species that I work on, we're happy
2 to assume presence, and then get on with the
3 project, get on with buying acres in the
4 compensation bank if the applicant is willing.

5 PRESIDING MEMBER LAURIE: Okay. Thank
6 you. You were going to give a presentation, and
7 we haven't let you do that.

8 MS. JONES: No, that's okay. I like
9 questions.

10 So I was talking about we have two
11 procedures for somebody to get a permit to do a
12 project. One is section 7 that we've just -- that
13 I just started mentioning, it has the 135 days.

14 There's also section 10, which is for
15 private applicants, where there's no federal
16 agency involved in handing out a permit. So that
17 it doesn't always apply to power plants. The
18 bigger power plants will usually have an EPA
19 permit that's required, a PSD permit.

20 Some of the smaller power plants, the
21 100 megawatt, or the 50 megawatt, don't -- might
22 not have a federal permit. And so they would go
23 through the section 10 process.

24 Section 10 process has no mandated
25 deadlines, and it is not where most applicants

1 want to be. So most applicants will do something
2 with their project, have a transmission line going
3 across BLM land, or involve the Forest Service in
4 some way, so that they can create or make sure
5 that there's a federal nexus for their project.
6 And that will speed the process.

7 So we've been actively working with
8 other agencies to educate them about the
9 Endangered Species Act and this whole federal
10 nexus thing, so that we could encourage them to
11 take the federal nexus and help applicants speed
12 their process.

13 PRESIDING MEMBER LAURIE: So the process
14 proceeds more quickly if you find that there is
15 federal jurisdiction, as opposed to when there
16 isn't federal jurisdiction?

17 MS. JONES: Right. Yes.

18 PRESIDING MEMBER LAURIE: Okay. Can't
19 you just say there's no federal jurisdiction
20 and -- I'm going to simply have to get a better
21 education as to how that process works.

22 MS. JONES: Under section 10 we're
23 writing habitat conservation plans and what we
24 tend to focus on, our priorities in our office are
25 for county-wide conservation plans.

1 So the few staff that we have working on
2 conservation plans are working on all of San
3 Joaquin County so that al the projects within San
4 Joaquin County, all the different kinds of
5 projects, can get coverage under that HCP once
6 that, once we have a permit with the county and an
7 agreement with the county on how it's going to
8 work.

9 So, if we --

10 PRESIDING MEMBER LAURIE: HCP is a
11 habitat conservation plan?

12 MS. JONES: Right, under section 10.
13 It's a section 10 permit. So we really focus our
14 efforts on the large area permits instead of each
15 individual project as it comes up. We can do each
16 individual project, and we have in the past, but
17 our staff is -- the priorities that have been set
18 are to work on the large county areas.

19 PRESIDING MEMBER LAURIE: So it's a
20 question of resources?

21 MS. JONES: Right.

22 PRESIDING MEMBER LAURIE: I see, okay.
23 Thank you.

24 COMMISSIONER PERNELL: I have one other
25 real quick question.

1 MS. JONES: Sure.

2 COMMISSIONER PERNELL: Is there an
3 expedited appeal process under section 7, or 10?
4 I'm assuming that there's an appeal process.

5 MS. JONES: The only appeal process that
6 I know of is when applicants -- we usually work
7 with applicants and they know what's going to be
8 in their permit when we issue it.

9 Although we do not issue a draft permit
10 to the applicant. But we're talking to them,
11 we're working on it. We like to have most of the
12 requirements in the project description that the
13 applicant has signed off on, that they're, you
14 know, willing to do.

15 COMMISSIONER PERNELL: So there's no
16 appeal process? I mean you normally work it out
17 with the applicant?

18 MS. JONES: Right. The appeal process,
19 I guess, is going to my boss, or my boss' boss,
20 and saying, I don't like this. And then we have a
21 meeting.

22 So there's no hearing board that I'm
23 aware of that we've ever used in the Sacramento
24 office.

25 COMMISSIONER PERNELL: Right, so they

1 would essentially have to go to court? If they go
2 to your boss, and your boss, normally would
3 probably agree with staff.

4 MS. JONES: I think usually some --

5 COMMISSIONER PERNELL: And this might
6 be --

7 MS. JONES: -- something is worked out.

8 COMMISSIONER PERNELL: -- an unfair
9 question to you, so I'm just thinking that if I
10 were an applicant and there was a determination
11 that there might be an endangered specie or
12 endangered habitat on where the footprint is going
13 to go, and I have a private consultant that goes
14 out, and say who has all the credentials, says,
15 well, no, that's not true.

16 Then do I have a right to appeal that
17 somewhere? Or does, you know, I'm just assuming
18 that there's an appeal process. If not, then it
19 has to go to somewhere to resolve it, if the two,
20 if the applicant and the agency can't resolve it.
21 There has to be some type of resolution mechanism.

22 MS. LYONS: Generally we have the
23 federal Administrative Procedure Act, which
24 provides for judicial review of agency decisions,
25 final agency action to determine if it was

1 arbitrary and capricious.

2 So if you don't have -- they would look
3 then at whether you've exhausted administrative
4 remedies, that's what we have our Environmental
5 Appeals Board, so in other words a court would not
6 look at a challenge until it had gone through our
7 Environmental Appeals Board process.

8 But if we didn't have that, and there
9 are no other administrative remedies that you have
10 to exhaust, then you have a right to file a suit
11 in federal court under the Administrative
12 Procedure Act.

13 PRESIDING MEMBER LAURIE: So, in
14 Commissioner Pernell's case, he would file an
15 appeal with the appeals board?

16 MS. LYONS: Excuse me, again? Oh, yeah,
17 if it was an EPA permit.

18 MS. JONES: But we don't have an appeals
19 board.

20 PRESIDING MEMBER LAURIE: Yeah, right.

21 COMMISSIONER PERNELL: Right, right.

22 That's the distinction I'm trying --

23 PRESIDING MEMBER LAURIE: Okay.

24 COMMISSIONER PERNELL: Okay.

25 PRESIDING MEMBER LAURIE: Right.

1 COMMISSIONER PERNELL: All right, thank
2 you. I hope I didn't put you on the spot there.
3 I'm just trying to understand the difference
4 between the two.

5 PRESIDING MEMBER LAURIE: The question
6 is an interesting one. What do you do if you
7 disagree? There's -- you wait, you know, --

8 COMMISSIONER PERNELL: Well, not if you
9 got construction loans out there, you're trying to
10 get your project out, so.

11 MR. MULVEY: I just wanted to mention,
12 there is a difference between section 7 and
13 section 10 under the Endangered Species Act. And
14 section 10 is a permitting process that addresses
15 listed species, or the take of a listed species
16 for nonfederal agency entities.

17 And the section 7 process entails
18 federal agencies. It's a consultation with that
19 agency, it's not an actual permit that's issued to
20 the agency. It's kind of a consultation and an
21 issuance of recommendations and terms and
22 conditions that they have to then abide by and
23 include in their permit process.

24 So, I think in the case where we were
25 doing a section 7 with the EPA, the appeals board,

1 but still the terms and conditions are really not
2 negotiable in that sense. That's where Ann was
3 talking about. The resource agency could then be
4 sued for being arbitrary and capricious if we
5 can't back up what our biological opinions say.

6 I don't know if that clarifies the
7 difference between section 7 and section 10 or
8 not.

9 COMMISSIONER PERNELL: Yeah, I had a
10 kind of a different determination of section 7 and
11 10, but that helps from my previous example of if
12 there's a disagreement.

13 MS. JONES: So if your plant that you're
14 interested in was through a section 7, if we were
15 issuing a biological opinion to the other agency,
16 then you would have that appeal through that other
17 agency.

18 If it was a section 10, it would --

19 COMMISSIONER PERNELL: Right, but it
20 wouldn't -- your recommendations to the other
21 agency would still stand?

22 MS. JONES: Yeah.

23 COMMISSIONER PERNELL: Right? Because
24 the other agency can't --

25 MS. LYONS: I think there's an issue

1 about whether or not we would have incorporated
2 those terms and conditions into our PSD permit.
3 If we had taken the terms and conditions and
4 incorporated those into the PSD permit, then --
5 and this hasn't been tested, but we have discussed
6 it with our office of general counsel, then those
7 terms and conditions would likely be appealable to
8 our Environmental Appeals Board.

9 COMMISSIONER PERNELL: Okay. I know
10 Commissioner Laurie got all of that, so.

11 DR. TOOKER: Okay.

12 PRESIDING MEMBER LAURIE: Writing it
13 down.

14 DR. TOOKER: Susan, do you have more to
15 present?

16 MS. JONES: Well, I was going to respond
17 to some of the questions that --

18 DR. TOOKER: Okay, that's fine. I just
19 wanted to make sure that we transitioned to the
20 next speaker when you've finished.

21 MS. JONES: Right. Okay. There were
22 two general issues that were on the list of
23 workshop questions, and so I just wanted -- the
24 first issue was what conflicts exist between
25 Energy Commission siting process and federal

1 permit processes.

2 I think we've actually been, from our
3 point of view I think we've been working pretty
4 well together with the CEC Staff biologists.

5 PRESIDING MEMBER LAURIE: And you should
6 know that the instructions given to the
7 Commissioners by the staff is that we have a great
8 relationship with all the federal people, don't
9 screw it up.

10 (Laughter.)

11 MS. JONES: Well, we've found your staff
12 to be very helpful. They know our regulations.
13 They're out there in front with the applicant
14 explaining to them right from the beginning, so
15 there aren't any surprises as we go along.

16 The constraints that I see are that we'd
17 like to see the applicant coming to us earlier,
18 and maybe even that includes coming to CEC earlier
19 before the project location and components are set
20 in stone, that they can't be changed.

21 Things could go faster if they picked a
22 site that didn't have a lot of species on it, you
23 know, like CEC Staff has been suggesting.

24 On occasion, applicants do know about
25 these survey requirements and don't hire their

1 biologists in time, or don't insist that their
2 biologists get out there and do the surveys. So
3 we've had applicants that we think know what the
4 drill is, but they don't do it in the time that it
5 needs to be done. And that is a lose/lose for
6 everybody concerned.

7 And then as I said before we've got
8 pretty severe staffing shortfalls in our agency,
9 and so we need to prioritize and power is, we
10 understand, an important issue in California.

11 Second issue was how can the Energy
12 Commission's siting process and the federal permit
13 and environmental review process be better
14 coordinated.

15 We talked with your staff before this
16 about including the regulatory agencies in the
17 pre-ap meetings, the pre-application meetings here
18 that already go on here, but have me come down and
19 talk to the applicants at that time.

20 Maybe have some kind of -- we have
21 monthly coordination meetings with the Corps of
22 Engineers for all the projects that we're working
23 on with them. We could do that here, as well, at
24 a kind of mid-management level.

25 Again, your biologists are doing great

1 work in communicating with us, letting us know
2 what the issues might be. And that really helps
3 us do our job very efficiently.

4 We've got a bunch of upcoming projects
5 that your staff have been telling us about. For
6 us it's not siting projects, it's transmission.
7 And if you could get us maps of where these are
8 located, and a description of what's planned, you
9 know.

10 There's already been some meetings, but
11 we still don't even have, like Path 15. We don't
12 know exactly where it's going to be, so we can't
13 assess what the endangered and threatened species
14 issues are going to be yet, on that.

15 I guess I've already mentioned Fish and
16 Game's natural diversity database; they need help
17 with staffing it and getting all that data
18 inputted into the computer. Working biologists
19 out there and applicants have access to that, and
20 that's the best way of getting the information out
21 about where species have been found.

22 And then I've already mentioned
23 conservation banks, or setting up banks that
24 industrial facilities can buy into. I know
25 there's some PG&E land and Southern California

1 Edison land that has some beautiful habitat and
2 species are present.

3 Some of that could be bought and set up
4 as a conservation bank that then power plants
5 could buy into when they occur or transmission
6 lines and pipelines. That would make everything
7 run much more smoothly.

8 PRESIDING MEMBER LAURIE: And is that
9 deemed adequate mitigation?

10 MS. JONES: That's a big part of the
11 pie. That's not all of it.

12 PRESIDING MEMBER LAURIE: You are, in
13 most cases, allowed to say -- as long as I -- that
14 is the mitigation need not be particularly site
15 specific, or at least your site specific. Just so
16 long as throughout the whole region, or the whole
17 state, or the whole country there's no diminution
18 of an endangered species, you can do what you want
19 on your property?

20 MS. JONES: We ask for mitigation for
21 the particular species that are to be impacted by
22 a particular project.

23 PRESIDING MEMBER LAURIE: And so it can
24 be on some other parcels, just like air offsets,
25 the mitigation is not necessarily at the site.

1 MS. JONES: Right.

2 PRESIDING MEMBER LAURIE: It's
3 regionwide, for example.

4 MS. JONES: Right.

5 PRESIDING MEMBER LAURIE: Okay.

6 COMMISSIONER PERNELL: Can I follow up
7 on that?

8 MS. JONES: Sure.

9 COMMISSIONER PERNELL: The species that
10 you're mitigating has to be able to survive in the
11 mitigation bank land that's proposed so that --

12 MS. JONES: Right.

13 COMMISSIONER PERNELL: Okay.

14 MS. JONES: Right.

15 COMMISSIONER PERNELL: That makes sense.

16 PRESIDING MEMBER LAURIE: Mr. Tooker is
17 all upset because we're taking too long.

18 DR. TOOKER: Thank you very much, Susan.
19 We'd like to now move on --

20 COMMISSIONER PERNELL: By the way, I
21 hope we didn't screw it up by asking you all these
22 questions for staff.

23 (Laughter.)

24 PRESIDING MEMBER LAURIE: We're also not
25 done yet.

1 DR. TOOKER: Yes.

2 PRESIDING MEMBER LAURIE: Thanks.

3 DR. TOOKER: Our next speaker who has
4 already provided some input, Brian Mulvey from the
5 National Marine Fisheries Service. Brian.

6 PRESIDING MEMBER LAURIE: Welcome,
7 Brian.

8 MR. MULVEY: Thank you. Thank you for
9 inviting me here. I prepared a handout which I
10 don't know if you have in front of you yet, but it
11 describes --

12 PRESIDING MEMBER LAURIE: No.

13 MR. MULVEY: -- basically our role and
14 interests --

15 COMMISSIONER PERNELL: We have it. I
16 think we have it.

17 (Pause.)

18 MR. MULVEY: I have extra copies here.
19 It's a brief summary that describes our roles and
20 what authorities we operate under, and with
21 respect to power projects. Including the
22 Endangered Species Act, and the Magnuson-Stevens
23 Act, which is as defined essential fish habitat
24 for many of our commercially managed species; and
25 the federal Power Act.

1 And then as an appendices, include a
2 species list of all the various species that we
3 manage.

4 This is just a brief outline just so you
5 know what we have to deal with. And we currently
6 have ten listed species under the Endangered
7 Species Act, steelhead and coho salmon and chinook
8 salmon of various types. This is covering the
9 whole range of our jurisdiction in California.

10 And then Susan reviewed basically our
11 federal resource agency's responsibilities as
12 under the Endangered Species Act. And so I'm not
13 sure what I can add to that process, other than
14 our agency is involved when power projects
15 essentially impact aquatic habitats, because all
16 of our species are in the water, and can be
17 impacted by associated impacts in the water or on
18 the riparian zones nearby.

19 And so we have critical habitat
20 designated for the salmonids throughout the state.
21 We have, like I say, essential fish habitat
22 designated along all up and down the coast and in
23 estuaries.

24 And with the new designation of salmon,
25 essential fish habitat, we have essential fish

1 habitat overlapping critical habitat for salmon.
2 So it's dually managed by the two different Acts.

3 So, in some --

4 PRESIDING MEMBER LAURIE: How does, and
5 not necessarily in California, because we don't do
6 hydro anymore, but in the Northwest, for example,
7 can you practically do a large hydroelectric
8 project and still provide for adequate mitigation
9 for those fish protected by your agency? And is
10 that done?

11 MR. MULVEY: I don't think I'm qualified
12 to answer that question. The federal Power Act,
13 as indicated here, just provides us with the
14 authority to make sure that there is fish passage
15 over these barriers.

16 If you're talking about a new project,
17 is that -- a new hydro power project?

18 PRESIDING MEMBER LAURIE: What I'm
19 really asking --

20 MR. MULVEY: The level of mitigation
21 gets so high, I think that I'm not sure that we --
22 I couldn't answer that question here.

23 PRESIDING MEMBER LAURIE: The question
24 on my mind is can today one do a large
25 hydroelectric project anywhere in the country --

1 or anywhere in the west?

2 MR. MULVEY: I couldn't answer that. I
3 don't know what level of mitigation would be
4 involved with those projects.

5 And it depends on the water system; the
6 types of fish that are there; what their listing
7 status is. So, --

8 PRESIDING MEMBER LAURIE: Along the
9 California coast --

10 MR. MULVEY: Potentially I think you
11 might be able to if there's a water system that
12 has no listed species. Like I say, I'd have to
13 further look at the ramifications of what the
14 hydro project would cause on habitat downstream.

15 DR. TOOKER: I have a question to kind
16 of, you know, to get away from the hydro for a
17 moment, to ask you with respect to our licensing
18 process in thermal power plants. Would your
19 concerns primarily be with projects that are being
20 proposed in the coastal zones? And from discharge
21 impacts or what kind of impacts would you think
22 would be the most significant and bring your
23 agency into the process for permitting purposes
24 for thermal power plants?

25 MR. MULVEY: I think any power plant

1 project that would entail withdrawal of water, or
2 even, like I say, impacting the riparian zone.

3 I know that there's certain guidelines
4 that already set forth in the approval of these
5 projects, but those are the concerns that we have.
6 The withdrawal of water for cooling is a big
7 impact, and that's Potrero is why we're involved
8 in that project.

9 DR. TOOKER: So theoretically if we had
10 a project proposed along the Sacramento River and
11 it was withdrawing water for cooling purposes you
12 would have a concern?

13 MR. MULVEY: Yeah.

14 COMMISSIONER PERNELL: Would you take
15 that concern to the water district or to the
16 applicant?

17 On a lot of these projects the applicant
18 has some type of relationship with the water
19 district, who then supplies the water.

20 MR. MULVEY: Are you asking how we would
21 get involved with that project, or --

22 COMMISSIONER PERNELL: Yes, I guess
23 that's the --

24 MR. MULVEY: Well, quite often, at least
25 I don't know if it's all -- but an intake is

1 actually constructed in the water, and that
2 involves the Corps of Engineers. So at the very -
3 - at that level, itself, anytime you're in the
4 water impacting with fill, under the 404 the Corps
5 of Engineers has to issue a permit. And we become
6 involved at that point with the section 7.

7 DR. TOOKER: I guess to clarify, and I
8 think maybe one of the points of interest here, is
9 there a difference between water rights and taking
10 the rights, let's say that the district, the water
11 district may be using its water rights to provide
12 water to a developer, as opposed to you're looking
13 at what the potential impacts are from that
14 withdrawal of the water from the river.

15 So I'm assuming you're dealing with the
16 second part, the impacts question, not the
17 allocation, the legal allocation of water right --

18 MR. MULVEY: If you're talking about
19 water rights, yeah, we have people working on that
20 aspect. That's a little trickier, but I know we
21 have some flow guidelines that we are setting up.
22 And I'm not sure on the federal nexus with that
23 project, that type of issue. If that's the
24 question.

25 I'm not sure what you're -- if you're

1 asking if whether we can get involved, or --

2 DR. TOOKER: Well, this is all
3 theoretical, but for instance, if a water district
4 is going to be withdrawing water from the
5 Sacramento River, and it has a certain allocation
6 that's been granted to it, I assume that granting
7 that water right in part would involve some input
8 from National Marine Fisheries Service to the
9 extent that it might have impacts on protected
10 species. But that would be done prior to or
11 without relationship to whether they're going to
12 use that water for a power plant or other
13 purposes. Correct?

14 MR. MULVEY: Correct.

15 DR. TOOKER: So when a power plant comes
16 along to use some of the water that's been
17 allocated to a water district, you would not
18 necessarily get re-engaged on the issue of
19 endangered species impacts of that water use?

20 MR. MULVEY: Already delegated water
21 use? Like I say, I'm not sure that I have enough
22 knowledge about water rights to give you a clear
23 answer.

24 But, --

25 DR. TOOKER: But you might have a

1 potential interest?

2 MR. MULVEY: Oh, yeah, we definitely
3 have an interest in the minimum flows and the flow
4 regime, itself, throughout the year.

5 But I can certainly find out more
6 information about that.

7 DR. TOOKER: Okay, but if this power
8 plant were, to say, located at Rancho Seco, and it
9 didn't withdraw water directly from the river, but
10 was being provided water by a water district that
11 was already allocated, then you wouldn't be as
12 involved in that?

13 MR. MULVEY: I couldn't answer that, I'm
14 not sure.

15 DR. TOOKER: Well, obviously it's
16 complex depending upon the individual
17 circumstance, but I think the interesting thing to
18 me is you may have interests that go beyond just
19 coastal plants. You have interests in large
20 facilities of any type that use water that affect
21 stream flows.

22 MR. MULVEY: Oh, very much so. Whether
23 the water is actually drawn out of the river or
24 not, I mean, can affect the flow in the river. So
25 there's a concern regardless of where the water --

1 and by drawing it directly out of the river,
2 certainly has a direct impact.

3 But indirectly drawing it from other
4 source, groundwater or other, indirectly impacts
5 the flows in the river, or it can. And it's that
6 connection that would get us involved in that
7 particular project.

8 DR. TOOKER: And if you had an issue
9 that you wanted to raise would you then be
10 coordinating your review process in terms of
11 section 7, would there be a section 7 permit
12 required?

13 MR. MULVEY: Section 7 would be federal
14 nexus involved. If there's no federal nexus it
15 would be section 10.

16 DR. TOOKER: So then you would be
17 working with U.S. Fish and Wildlife Service in a
18 coordinated process to carry that forward?

19 MR. MULVEY: Correct.

20 DR. TOOKER: So are there any timing
21 issues here, other than what Susan has raised in
22 staff resources issues, that are unique to your
23 responsibilities and roles?

24 MR. MULVEY: No, I think we're very
25 similar case, understaffed and most of the

1 consultation process is right now -- particularly
2 section 10, they do take a lot longer to
3 coordinate.

4 Section 7 does have the guidelines of
5 135 days, and we pretty much use the whole 135
6 days currently with our staff.

7 DR. TOOKER: And I just had one more
8 question to round things out. If we had a project
9 come to us that was a repowering of an existing
10 coastal site, and they use one-through cooling,
11 and they were going to change their temperature
12 profile, is that something that the Marine
13 Fisheries Service might have a concern about?

14 MR. MULVEY: Well, that's one aspect of,
15 yeah, withdrawal of cooling water and putting back
16 is the thermodynamics. New technology is
17 certainly helping in that regard, but it's a
18 concern of ours, as well as the potential of
19 additional contaminants that might be introduced
20 into the water as it goes through the system, even
21 though it does meet the water quality guidelines.
22 And we rely on those guidelines a lot.

23 But there's certainly another aspect
24 that we look at and consider. So the withdrawal
25 of water not only is the impingement at the

1 intake, there's entrainment through the system,
2 and then because they do treat the water as it
3 goes through the system, and there's other sources
4 of contaminants as it goes through the system, as
5 well as heat.

6 So those are the main aspects that we
7 consider on cooling water.

8 I did want -- on the cooling water I
9 wanted to add that when you do in-water work it
10 does add another layer of bureaucracy to some
11 degree, where you have other regulatory factions
12 involved including, a lot of it's EPA and Corps of
13 Engineers.

14 In the case of Potrero where they're
15 talking about installing an intake, it's involving
16 the Dredge Materials Management office, and those
17 include the various, it's an interagency
18 committee.

19 And that's another type of review
20 process that takes a little bit of time to review
21 the sediment testing and looking at the results.

22 So, as far as another concern for
23 expediting these cases, that would be another
24 aspect to consider, is that when you do work in
25 water and disturb sediments, it does need to -- it

1 may need to go through a whole different approval
2 process.

3 PRESIDING MEMBER LAURIE: Brian, in
4 California what species that your agency has
5 jurisdiction over is a power plant operator most
6 likely to have to deal with?

7 MR. MULVEY: Do you have a particular
8 location or --

9 PRESIDING MEMBER LAURIE: No, the State
10 of California.

11 MR. MULVEY: Because there are species,
12 like I say, if you're talking about listed species
13 under the Endangered Species Act, the primary
14 areas are inland and we're dealing with steelhead
15 and salmon.

16 On the coast it's a whole other array of
17 species. And depending on where you are on the
18 coast, we have steelhead, and/or salmon. As you
19 travel north you have more -- you have coho salmon
20 and then chinook salmon that come into the scope
21 of may affect.

22 And then you also have most all of the
23 species managed under the Magnuson-Stevens Act, we
24 have 82 groundfish species and five coastal
25 pelagic species that we manage, and have essential

1 fish habitat designated.

2 And depending on where you are on the
3 coast you are going to be impacting the essential
4 fish habitat for a number of those species, as
5 well as the salmon management plan.

6 They also have EFH, as I mentioned
7 before, they are dually managed and consulted on.

8 PRESIDING MEMBER LAURIE: Thank you very
9 much.

10 DR. TOOKER: So it sounds like you would
11 share in Susan's concern for early consultation
12 with applicants?

13 MR. MULVEY: Yeah, I would repeat a lot
14 of her recommendations to help streamline our
15 process.

16 And one of them is to get involved early
17 with the prefiling stage potentially so that we
18 can help guide the project in a fashion that would
19 minimize impacts on our species.

20 And another aspect would be to bundle
21 the projects together by habitat type and region
22 so that we could mitigate them in a bundle, as
23 well, and like she was mentioning about the
24 mitigation bank for the fairy shrimp. That would
25 help us better if we had mitigation that was

1 overwhelmingly a benefit for our fish species.
2 Much easier to sign off on those types of
3 projects.

4 And just any design of the project that
5 would minimize the actual impact to our species
6 and their habitat would help streamline our
7 process.

8 DR. TOOKER: Thank you. Does that
9 conclude your presentation?

10 MR. MULVEY: Yes, it does.

11 DR. TOOKER: If there are no further
12 questions we'll move on to John Grattan
13 representing the development community.

14 We've had a pretty good presentation of
15 federal regulatory procedures and needs. I'm sure
16 that John can provide some perspective regarding
17 how developers deal with those needs in our
18 process and in the federal process. John.

19 MR. GRATTAN: Thank you.

20 PRESIDING MEMBER LAURIE: Good morning,
21 Mr. Grattan.

22 MR. GRATTAN: First, I probably have to
23 disavow representing any particular developer, and
24 maybe even the development community. I tend to
25 be a lot gentler than some of my clients.

1 PRESIDING MEMBER LAURIE: Mr. Grattan,
2 we know that when you speak the development
3 community listens.

4 (Laughter.)

5 MR. GRATTAN: First, four things before
6 I start, and any comments I have today with
7 respect to where the system isn't working, they're
8 not personal criticisms or even institutional
9 criticism. Lots of the problems that we all have
10 together are lack of resources, and sometimes two
11 different systems attempting to mesh.

12 The next thing I want to say is that one
13 thing that has helped, at least from my
14 perspective, very recently, has been the formation
15 of the green teams. I was a little bit jaded and
16 cynical about how those green teams were going to
17 work, but actually I think, with having at least
18 two federal agencies on there, USEPA and U.S. Fish
19 and Wildlife Service, that it has educated the
20 bosses of some of the people here. And the
21 perspective has broadened.

22 I have to say it reminds me, there's a
23 story in the Middle Ages of two serfs working with
24 a shovel, and one was asked, what are you doing,
25 and the gentleman said, well, I'm moving this pile

1 of dirt from here over to there. And I have this
2 little wheelbarrow that does it. And they asked
3 the second one what are you doing, and he said, I
4 am building short cathedral. And we're tending to
5 get a perspective of building short cathedrals
6 together. And that's --

7 Next is the issue of the emergency.
8 Things are really clicking in this emergency.
9 Things are really clicking at least from the
10 developers' perspective. Ann Lyons, to my left,
11 and I were on the phone conversation at the end of
12 last week on a related energy matter, and
13 everyone's shoulder was to the wheel. And
14 incredible things happened.

15 But it's important, I think, for all of
16 us to realize that what we need are some
17 institutional reforms. And that we all do much
18 better when we move at a brisk walk rather than a
19 sprint. I don't think either the development
20 community or the regulatory folks want to be in a
21 position of dealing with emergency after emergency
22 after emergency. We need to look at reasonable
23 process and institutional reforms, and maybe
24 that's a --

25 We've spoke about these at some other of

1 the sessions. Things are progressing through some
2 CEC recommendations and the Legislature.

3 Next is from a developer's perspective I
4 think it's very important, and I heard this from
5 all sides here, that it's really important that a
6 developer -- before a developer comes in with an
7 application, they do a true siting alternative
8 study; that they really figure out what the best
9 side is; they really figure out what the best size
10 of the project is; what the best specific
11 location.

12 And try to try and pick your way, just
13 like with species, the best thing to do is to
14 avoid them, not to have to mitigate for them.
15 Sometimes with permits the best thing to do is
16 avoid them. And, you know, that's part of the
17 developer's process.

18 There are some ironies, and we heard
19 this, that a section 10, which is a -- excuse me,
20 a section 7, which is where other federal permits
21 are involved like a PSD permit, that's generally a
22 pretty big project.

23 A smaller project doesn't have a PSD
24 permit, and that doesn't trigger a section 7
25 consultation, therein to a section 10, which is

1 more difficult, more time consuming.

2 We had one recently with the GWF project
3 in Hanford, the Hanford Energy project, which was
4 sized for the community. It was a 100 megawatt,
5 just under 100 megawatt project. It was in a
6 disturbed area. There was no PSD permit. There
7 were no federal permits. And if it weren't for
8 Susan Jones, and Energy Commission biologists,
9 we'd still be messing around trying to find a
10 habitat conservation plan. Susan and the staff
11 biologist came up with a way to contribute to an
12 existing one.

13 But sometimes you can plan your way
14 right into trouble, anyway.

15 PRESIDING MEMBER LAURIE: John, tell me
16 this. From a developer's perspective, again,
17 you're visiting the offices of XYZ Development
18 Corp. And for a year those folks have been
19 developing overlay maps.

20 One map has all the endangered species.
21 Another map has areas to avoid environmental
22 justice issue. And another map has areas to avoid
23 nonattainment areas. Another map has an area to
24 avoid transmission congestion.

25 Is there any spot in California where

1 one can safely go, other than Kern County, today?

2 MR. GRATAN: And Kern County isn't all
3 that safe sometimes. I don't think there is a
4 spot, I don't think there is a perfect spot. But
5 I think you prioritize the troubles you're going
6 to see.

7 PRESIDING MEMBER LAURIE: There's some
8 public policy questions involved. And the public
9 policy questions are is you want to avoid impacts,
10 then this is where you got to go.

11 The question then arises, is that from
12 an energy supply perspective, is that where we
13 want it to go, or are there conflicts. And we
14 don't know the answer to that question.

15 You don't have to respond, but it's a
16 public policy issue that nobody is facing today
17 because there hasn't been any planning on these
18 issues today.

19 MR. GRATAN: Well, there hasn't been
20 any public planning. Again, I think a responsible
21 developer does a sort of overlay like you've
22 described. And I've been involved with one
23 project that was a real good site. I can't
24 discuss this, because they're not in with an
25 application, another developer has a pretty damn

1 good site for a power plant.

2 It's real hard to find a nonattainment
3 area in California, at least under state law. But
4 it -- yeah, excuse me, it's real easy to find,
5 thank you, real easy to find a nonattainment
6 area --

7 (Laughter.)

8 PRESIDING MEMBER LAURIE: It's real easy
9 to find a nonattainment area, yeah, right.

10 MR. GRATAN: I want to give you quickly
11 some examples where some success stories of
12 federal and Energy Commission and developer
13 interaction, generically.

14 One is the, and maybe you'll get into
15 this this afternoon, but one of them is the issue
16 of NEPA and CEQA. And the Western Area Power
17 Administration, at least in a project I've been
18 involved in, has come up with a very good way to
19 mess -- mesh those two projects -- Freudian -- and
20 the way what has happened is I think the Western
21 Area Power Administration has become comfortable
22 with the rigor of the Energy Commission's process.

23 And can track that, and they understand
24 that in the end the Energy Commission almost
25 invariably mitigates projects down to

1 insignificance. And so they can approach that
2 process with their doing an environmental
3 assessment, tracking a lot of the Energy
4 Commission's work, and doing a finding of no
5 significant impact, a FONSI.

6 I think in the beginning, and maybe some
7 other federal agencies, not being familiar with
8 the Energy Commission's process, figure that if
9 the state is going to do an EIR equivalent, then
10 they're going to do an EIS.

11 And then you get into problems. Because
12 while the acts are similar, they're not really the
13 same, particularly with respect to treatment of
14 alternatives.

15 So, anyway, that's one area, Western
16 Area Power Administration's approach to meshing
17 the CEQA/NEPA process.

18 Another process that works pretty well
19 is, or at least has so far, is the PSD process.
20 And that's where the biological opinion is in.
21 And incorporated in that, and also where there is
22 no appeal, no appeal to the Environmental Appeals
23 Board.

24 Areas where it doesn't work is when the
25 Commission is going through its process, and the

1 federal approvals and permits aren't in. The
2 Commission, it seems to me, has become fairly
3 comfortable over the years in issuing its license
4 prior to the PSD permit being in, because you do
5 have, at least, the new source review permit in
6 the authority to construct, excuse me, the
7 determination of compliance from the local
8 district, and you get a sense that a PSD permit
9 will be forthcoming, or maybe won't be
10 forthcoming.

11 I think that the Commission has
12 struggled with biological opinions not being in,
13 because I don't think they have quite the sense of
14 inevitability or the sense of comfort that it
15 would be in. And this, on occasion, has slowed
16 the Commission's process.

17 Sometimes where the process doesn't work
18 is where the processes are so very different from
19 one another. I mentioned the EIS/EIR issue. But
20 another case, or another issue a developer faces
21 is the Commission's process is an on-the-record
22 evidentiary process with cross-examination. And
23 even though the applicant has the burden of proof,
24 staff or intervenors put on a case. And that case
25 is subject to cross-examination.

1 This is not so with federal permits.

2 The federal government being not just a sovereign,
3 but the sovereign, and having a different system,
4 they're not subject to cross-examination.

5 They can write a letter saying that
6 something is, we think this is serious. And the
7 Commission takes that letter very seriously.

8 I think -- well, I'll get into my -- and
9 I have seen examples where there have been phone
10 calls into the Commission with respect to a
11 federal agency's view on the adequacy of a
12 process. And things kind of got stopped dead in
13 the water.

14 I have some recommendations. I'll be
15 real brief here. If you want to interrupt on what
16 I've said with questions, go for it. But here are
17 my recommendations, and they may echo some that
18 you've heard.

19 I think a scoping meeting with federal
20 agencies prior to submission of an application,
21 under the Energy Commission's auspices, getting
22 everyone there is not just an excellent idea, but
23 perhaps is now a must.

24 And I would include in there EPA with a
25 different hat on that, if there is an EIS

1 involved, because EPA does have a sort of a
2 favored position among the commentators when an
3 EIS is involved.

4 Next is we had experience in the San
5 Joaquin Air Pollution Control District with a
6 program called a CAP-certified application. And
7 what I'm getting to here is a problem that federal
8 agencies, particularly the Fish and Wildlife
9 Service have, is resources.

10 It's in the staff report, and it's true.
11 I mean it is a lot of workload and not that many
12 people to handle it.

13 In the air district, the San Joaquin Air
14 District, what they had was a program of certified
15 application preparers. And I don't know how many
16 there were, not many, but those applications were
17 applications prepared by those qualified people
18 came in looking like a permit and were processed
19 much more quickly.

20 I would suggest that maybe this could be
21 done for biologists, as well. Maybe you can
22 certify biologists and have a program where
23 they'll come in with an assessment that looks like
24 an opinion, and that might save some review time.

25 The next issue, and they're related, is

1 I think when federal approvals are not in through
2 the Commission process, that the Commission should
3 not fear to issue a license conditioned, and
4 conditioning construction upon receipt of a
5 federal permit.

6 I know that there's a legal issue. The
7 applicant has the burden of proof with respect to
8 compliance with laws, ordinances, regulations and
9 standards, but I think that number one, I think
10 staff can probably give the Commission a sense of
11 comfort as to where the, let's say the biological
12 opinion is, and what the history has been with
13 biological opinions, what the species are.

14 And number two, the applicant, in
15 meeting its burden of proof, can agree, which will
16 have to agree anyway, to complying with whatever
17 those conditions are in the yet-to-be-released
18 biological opinion.

19 PRESIDING MEMBER LAURIE: Well, but
20 isn't the problem, John, that if you don't know
21 what the conditions are going to be, how do you do
22 the environmental analysis of those conditions?
23 And if a conditioned permit is issued, and the
24 environmental ramifications of those conditions
25 have not been analyzed, that violates CEQA, does

1 it not?

2 MR. GRATTAN: Well, okay, if -- I have
3 to back up. I was addressing a LORS issue,
4 compliance with laws, ordinances, regulations and
5 standards, in this case federal laws.

6 And I don't think you need the degree of
7 analysis where it's a LORS issue. Where it's a
8 CEQA issue, I think that the Commission Staff can
9 provide, and does provide the analysis -- I'm
10 speaking biology for instance, does provide the
11 analysis on which you can make a CEQA decision.

12 The issue of mitigation, if a particular
13 mitigation has another environmental impact, I
14 guess that most of them don't. And that if it
15 does have another environmental -- if a condition
16 of mitigation does have an environmental impact,
17 then I guess one can amend the process.

18 I mean I think that's a long risk --

19 PRESIDING MEMBER LAURIE: Because
20 there's law on that. And the law is very clear
21 that if, as part of your mitigation, you have to
22 build a sewer treatment plant, or you have to
23 reroute certain waterways.

24 Absent the analysis of what it takes to
25 accomplish that, then your CEQA analysis has been

1 deemed by the courts to be inadequate. And that's
2 the biggest issue when it comes to conditioning
3 entitlements on the issuance of permits, unless
4 you know with a great deal of certainty, what
5 conditions are going to be attached to that
6 permit.

7 MR. GRATAN: Yeah, I think we can beat
8 that. I mean I think that -- well, first, before
9 this Commission, I think, in one of the cases we
10 had an air quality -- or the offsets were being
11 provided by burning a different fuel, which was
12 less emitting, but which may have had other
13 environmental impacts.

14 But that was before the Commission, and
15 that was something that -- it was before the
16 Commission and had to be analyzed.

17 I think if it isn't before the
18 Commission, if a specific mitigation isn't before
19 the Commission, you know, I think it -- and then
20 is later presented, at that point, you know, at
21 that point it can be analyzed.

22 To say generically that every mitigation
23 measure or any mitigation measure is going to have
24 an impact, I don't think that needs to halt
25 progress. You can agree to do that. If it comes

1 up it can be raised later.

2 I don't think most mitigation measures
3 have impacts.

4 MR. BUELL: I'm trying to talk here.
5 This is Rick Buell, John.

6 MR. GRATAN: Hi.

7 MR. BUELL: I think the process -- maybe
8 I shouldn't try talking -- the process that has
9 worked on many cases is the staff has worked with
10 the biologist to try to identify what measures the
11 federal agencies are likely to require, and then
12 adopt those as part of the Commission's
13 recommended mitigation measures.

14 And that's one aspect. And that process
15 has worked quite well with the staff of the Energy
16 Commission working with the federal agencies
17 trying to define what that mitigation is likely to
18 be.

19 There are some rare instances, like you
20 have discussed, where a mitigation measure might
21 actually result in a secondary impact or indirect
22 impact resulting from the project.

23 Those things, is my understanding, would
24 have to be analyzed in the Commission's process.

25 The Commission is also precluded from

1 making any finding that is in conflict with
2 federal law. So if we knowingly adopted a
3 mitigation measure that did not conform with
4 federal requirements, then we would be in
5 violation of the Warren Alquist Act.

6 So.

7 MR. GRATAN: I understand that, and I'm
8 not suggesting that you adopt a mitigation measure
9 that's in conflict with federal law. I'm
10 suggesting you allow an applicant to agree that in
11 essence they will not violate federal law.

12 MR. BUELL: And I think that's the
13 process that we have been using, in that we've
14 tried to work with those federal agencies, and the
15 representatives of federal agencies have come to
16 our hearing process and said, these things look
17 good to us. And we've gone forward with a
18 decision based upon that, without actually having
19 the federal permit in hand prior to our decision.

20 MR. GRATAN: Yeah, and you do. You do
21 this routinely, I think, with PSD permits.

22 I also think that in cases where there
23 is uncertainties raised with federal issues, that
24 again construction, a license can be issued and
25 construction cannot start until a particular thing

1 happens.

2 In one case we had an EPA enforcement
3 issue. An issue which I think was susceptible of
4 resolution. And I, at least, didn't think that
5 the Commission process should have stopped
6 awaiting that resolution.

7 The next thing that I would suggest, and
8 I would appreciate any input from EPA and the Fish
9 and Wildlife Service or National Marine Fisheries
10 Service, when one has -- one of the things that
11 has been delaying PSD permits is the biological
12 opinion.

13 And I'm wondering if it is possible to
14 issue a conditional PSD permit that again that
15 construction not begin until the biological
16 opinion comes in.

17 What I'm looking to avoid, momentum is
18 real important, and accountability is real
19 important. And it's a conditional permit is
20 better than no permit. It sort of isolates where
21 the problem is, what needs to be resolved.

22 And that would be my recommendation.

23 PRESIDING MEMBER LAURIE: Thank you,
24 John.

25 DR. TOOKER: Does that conclude your

1 comments, John?

2 MR. GRATTAN: Yes.

3 DR. TOOKER: Thank you.

4 PRESIDING MEMBER LAURIE: Thank you,
5 sir.

6 COMMISSIONER PERNELL: I have just one
7 question for John. And it relates to the
8 biological report that EPA or someone would do,
9 and if I heard you correctly you were suggesting
10 that perhaps they could have consultants come in
11 and help them if their staffing levels don't allow
12 them to expedite or to finish on time.

13 MR. GRATTAN: That's correct, but the
14 difference would be not -- and I don't disagree
15 that they ought to be able to hire consultants,
16 but this would be a certified person working for
17 the applicant, submitting a document which,
18 because that person is certified, gets expedited
19 treatment. And that's what happens in the air
20 district.

21 COMMISSIONER PERNELL: Would that allow
22 a neutral opinion?

23 MR. GRATTAN: The neutral opinion is the
24 federal agency. I mean if the federal -- it's
25 still the federal agency's permit to issue. It

1 just means that it gets processed.

2 COMMISSIONER PERNELL: And that's
3 someone the applicant would be paying?

4 MR. GRATTAN: Yes.

5 COMMISSIONER PERNELL: In your scenario?

6 MR. GRATTAN: Yes.

7 COMMISSIONER PERNELL: Okay, is there a
8 rebuttal to that?

9 MR. GRATTAN: I doesn't change --
10 Commissioner Pernell, it doesn't change the
11 responsibility of the federal agency to make that
12 decision. All it does is allow a more expedited
13 treatment for certain technical consultants who
14 have been certified, documents prepared by them.

15 DR. TOOKER: We can acquire information
16 from the San Joaquin Air District and provide it
17 to the Committee as to how they run their program,
18 and what the criteria are. It might be useful to
19 understand that.

20 John, sounds like the concept would be
21 the same whether it was a local air district or a
22 federal agency?

23 MR. GRATTAN: Correct.

24 MS. LYONS: Well, I'm not so sure that
25 we wouldn't have some problems with doing that at

1 the federal level. Really, it would be our ethics
2 officers or people like that who'd need to look
3 into it.

4 But I've never seen that done before at
5 the federal level. I am aware of it at the state
6 level. But we do have our own contracting
7 abilities, and I think that we probably have to
8 hire our own contractors.

9 But, I'm not even aware of it being done
10 in sort of the NEPA context. So, I think there
11 might be some problems at the federal level as far
12 as conflict of interest that would be more arising
13 from an ethics issue than specifically from any
14 one of the statutes.

15 MS. JONES: Yeah, I think what John is
16 suggesting is that there be certain consultants
17 out there that we've talked to and that we know
18 that would do the application for the applicant.
19 And that if we knew that, you know, a certified --
20 somebody that we had worked with a lot in the past
21 or knew well was providing an applicant, we know
22 it would be complete because they wouldn't hand it
23 in until it met the requirements.

24 And so I think it would be a system for
25 getting better applications in there, not --

1 MS. LYONS: Yeah, as long as it's
2 restricted to the application phase of it, it's
3 not the analysis that you'd be -- you have to
4 develop your own record as a decision maker.

5 And that record is based in large part
6 on the application. But again, I think this just
7 underscores the importance of having a really good
8 complete application in the first instance. So
9 that anybody, any applicant should be able to do
10 that.

11 DR. TOOKER: Yes, I would agree. If
12 there are no further questions, we have one
13 speaker to wrap up our discussions this morning
14 before lunch, and talking about experiences of
15 working with state and federal permits. And
16 that's Gary Winters from Caltrans.

17 PRESIDING MEMBER LAURIE: Welcome, Mr.
18 Winters.

19 MR. WINTERS: Yes, I'm sort of the odd
20 duck in the pond here, meaning that we're a
21 development agency, also, and have been grappling
22 with these issues for quite some time.

23 Can I have the next slide, please. I'm
24 going to go through it quickly because what I was
25 asked for was not so much a response to issue 1

1 and 2, but rather what streamlining methodologies
2 are we trying to put in place in Caltrans to
3 address environmental streamlining.

4 And all of our funding, or the current
5 funding comes under what we call T21, which is the
6 Transportation Efficiency Act of the 21st Century.

7 And in that is the first act that has
8 allowed us to have some kind of streamlining.
9 Unfortunately it was through a cooperative effort
10 scenario. I think future ones may be a little
11 stronger in their language, but at this point
12 we're dealing with cooperative efforts.

13 It didn't change any of the
14 environmental laws, and it didn't change any of
15 the regulatory agencies' practices, et cetera.
16 And also we're fully aware that environmental
17 issues and requirements are not going to get any
18 easier.

19 T21 is a six-year plan, which basically
20 increased the funding for Caltrans very
21 significantly, that with the addition of the
22 Governor's congestion management added another 3
23 or 4 billion in. So, the program's somewhere in
24 the neighborhood of \$2 or \$3 billion per year.

25 We were going along pretty happy until

1 SB-45 came along, which in essence took the
2 funding that comes to Caltrans and split it a
3 75/25 split. 75 percent of that going to the
4 local MPOs and RTPAs, which are the municipal
5 planning organizations, and 25 percent goes to
6 Caltrans to work on what we call the STIP
7 projects, or the state transportation improvement
8 plan.

9 Currently I don't know how many of you
10 know, but we have a headquarters plus 12 district
11 offices who are, I wouldn't say autonomous, but
12 close to it in terms of how they do their work.
13 In the environmental area we have approximately
14 820 or '30 environmental planners that range
15 anywhere from water quality through biology to
16 cultural resources, haz waste and storm water.

17 One of the things that we're starting to
18 understand -- can I have the next slide, please --
19 that we're understanding -- next slide, please --
20 oh, okay, I'm sorry, go back one.

21 I'm going to go through these very
22 quickly. It took us awhile to recognize, and
23 especially being a huge organization like we are,
24 we're kind of like the Bismarck going through the
25 Atlantic.

1 But getting us to change is very very
2 difficult to do. There's inertia there. And for
3 many years we've been building projects pretty
4 much where we wanted to --

5 PRESIDING MEMBER LAURIE: What
6 eventually happened to the Bismarck?

7 MR. WINTERS: I know exactly, and I
8 think it's happening to us.

9 PRESIDING MEMBER LAURIE: Thanks.

10 MR. WINTERS: But we're hoping it won't
11 be as prolonged or as catastrophic.

12 We recognize that there are differences
13 in our histories, our experiences. And most
14 importantly, they don't have the same mission.

15 Next slide, please. Just to show it
16 very quickly, if you look through Caltrans'
17 mission is basically improving mobility across
18 California. Fish and Wildlife Service is there,
19 EPA is there, DFG is there, and not one of them
20 mentions energy and/or transportation.

21 I think that's an important thing to
22 remember, that when we deal with the resource
23 agencies as a developing agency, that they have a
24 role that they are fulfilling to protect the
25 environment, and we need to recognize that.

1 And it's taken, I think, a lot of
2 development groups awhile to come to that
3 conclusion.

4 Next slide, please. Tackling these
5 cultural differences. What it comes down to is
6 fully and clearly explain and document a project,
7 purpose and need.

8 This is an area that we work a lot with
9 the resource agencies on what is an appropriate
10 purpose and need for a project.

11 The next one is, and it is honest and
12 open disclosure of potential impacts. A very very
13 key issue. I'll get into that a little bit later
14 when we talk about when should we be dealing with
15 the resource agencies. You've already heard it
16 earlier from Susan, et cetera, that it should be
17 early. And we've making very big strides and
18 working in that way.

19 Cross-functional training, interagency
20 rotational assignments. Good ways for them to
21 understand transportation and us to understand
22 what their needs are.

23 For example, we have a position with the
24 Coastal Commission, as well as a position with the
25 Corps of Engineers. And it really has worked very

1 well in terms of an understanding of how we do
2 business.

3 We have a lot of other things going on
4 the side where we sit down and explain how the
5 transportation project or process runs. It's very
6 convoluted. It's very difficult. And the
7 resource agencies often don't understand how that
8 works and how they mesh with it.

9 Next slide, please. Involve resource
10 agencies at project initiation. This is what was
11 called for a little earlier as suggested.

12 We have at various stages before a
13 project is what we call programs. And one of them
14 is the project initiation document. And that's in
15 the conceptual stage.

16 The next stage that comes to that is
17 what we call the PSR, which sets the scope, the
18 cost and the scheduling for a project. Under SB-
19 45 I mentioned earlier, the mantra now is
20 delivery, delivery, delivery. That old saying.
21 The project delivery is the key issue.

22 And if you're going to do that, you
23 can't be down the pike and run into environmental
24 issues. So, it stands to reason, and I'll show
25 what we have been doing in this area, is to bring

1 in the resource agencies at that earliest stage.

2 It's much easier to identify potential
3 issues at that point than it is to get halfway
4 through the environmental process and find out,
5 oh, there's a wetland there, or there's some other
6 issue. Again, we're looking at the delivery
7 aspects.

8 We have various MOUs. The MOUs are to
9 work closer together. They're to do various
10 things together. What often happens with MOUs, I
11 don't know if other organizations, but they get
12 written and they get put in a file cabinet, and
13 they really don't get disseminated adequately.
14 And people, the organization discussing what those
15 mean, what the roles are, what the intent were, et
16 cetera, et cetera.

17 Good project scopes and schedules. I
18 got into that a little bit. It's critical for
19 Caltrans that we have a project that we can
20 schedule and know that it's going to meet the
21 scheduling.

22 For example, we call it PAD, which is in
23 fact the project report and environmental
24 document. We need to scope that because prior to
25 that we actually fund what's happening, that

1 programming aspect I mentioned.

2 So if you get halfway through your
3 environmental document and find out you have to go
4 back and do another review, you've blown probably
5 cost as well as scheduling.

6 Next one, please. How do we address the
7 resource issues. We've heard numerous times that
8 they are very short on staff. We, in fact, are
9 trying to do that. We revise our thresholds to
10 focus our MOU activities on significant projects.

11 Every project in Caltrans, we have about
12 3000 in the pipeline. We come out with about 800
13 a year. Everyone is looked at from an
14 environmental standpoint. And most of them that
15 we do CEs for, major documents, probably somewhere
16 around 100 to 150 a year.

17 Reduce revising design right-of-way and
18 environmental decisions. And I think you'll see
19 something we've done internally that that is a
20 major change in the way we have done business, and
21 it also should alleviate a lot of the issues that
22 we have with the resource agencies, where we go in
23 day A and say this is the project we're going to
24 build. We start doing our environmental analysis.
25 We get eight months down the road and we go to the

1 resource agency and basically say, oh, by the way,
2 we now have a prime instead of project A.

3 They've wasted resources and we've
4 wasted their resources, so we're looking at
5 controlling that. -- agency meetings, I think it
6 basically says that, and we're trying to make our
7 meetings much more productive.

8 If there is a difference of opinion,
9 asking that the appropriate people be there to
10 make decisions.

11 Okay, these are some of the things that
12 we're trying to do within Caltrans to streamline
13 the environmental process.

14 We recognized about two years ago, prior
15 to actually T21 providing any funding, was to
16 provide staff resources to the agencies. And the
17 main thrust of this again was early consultation.
18 Get them in to talk to us early. We did that via
19 interagency agreements, and behind that an MOU
20 which basically looked at things such as roles and
21 responsibilities, project priorities, performance
22 measures and dispute resolution mechanisms.

23 Next slide, please. Currently we have,
24 I think, five positions with Fish and Wildlife
25 Service, three in Sacramento, two in Carlsbad.

1 USEPA has hired two. NMFS has still not hired,
2 mainly because they're under a freeze right now,
3 which has been a major problem of getting staff
4 on, and even when their freeze was not in place,
5 getting -- there's not that large of a pool of
6 qualified people out there to start doing the
7 work.

8 And then, furthermore, there is a
9 certain amount of time. They don't hit the ground
10 running, they basically have to be trained. And
11 so we recognize that, and so this is kind of an
12 over the long haul looking at providing resources;
13 get them trained so that they can work on Caltrans
14 projects.

15 We also have one with the Corps of
16 Engineers in southern California, and I'll mention
17 another one in San Francisco in a minute.

18 Coastal Commission has two on board,
19 actually three, but not under this IA. Department
20 of Fish and Game, California Fish and Game, we've
21 supplied six positions and SHPO three, which still
22 need to be filled.

23 When we went into this particular
24 process we basically sent them over the resources,
25 i.e., the contracting dollars to do that.

1 We've run into quite a few issues in
2 terms of position control, various other
3 administrative issues that has basically made it
4 so we filled about 20 positions out of the 25 that
5 we intended having.

6 I'm hoping to get, you know, a little
7 more speed going to it. We're very much
8 interested in evaluating it. We would like to
9 plan for more. I think if I was to do it again I
10 certainly would look at a combined MOU interagency
11 agreement so that you have one document that's
12 funding, as well as the other aspects of it.

13 I would also probably look at trying to
14 supply them personnel along the lines of what I'll
15 talk about in a second, as opposed to sending over
16 funding so that they can hire the people. It's
17 been very difficult.

18 The first part of the issue was I think
19 the consensus of a couple of the organizations
20 was, well, you sent us money so therefore you want
21 the right answer. You only want your answer. And
22 it took us awhile, but in fact, the fact of the
23 matter is we want an answer, not the right answer,
24 or the one that we want, but we want somebody on
25 the other end of the phone to give us a call back

1 and say, yeah, we're willing to come in and look
2 at these projects for you.

3 Interagency partnering. We have
4 recently developed a tri-agency partnership with
5 CalEPA, Resources and BTNH, which is housing,
6 transportation and housing, which is us.

7 And we are looking at, our goal is to
8 streamline trans-projects without compromising the
9 environmental process. So it's an upper level
10 group that's looking at ways that we can do a lot
11 of things.

12 For example, share resources on GIS
13 coverages. How to do betterments on projects. We
14 recognize that resource agencies don't get
15 anything out of a transportation project. They
16 get some kind of impact that's going to have some
17 kind of mitigation.

18 T21 allows us to do some enhancements.
19 And the Transportation Commission has sent over a
20 report to the Legislature that in fact cited quite
21 a few projects on the east coast where they had
22 enhancements. So I'm looking forward to the next
23 couple years where we will be able to offer some
24 enhancements as opposed to just mitigation.

25 Next one, please. This effort I just

1 talked about at the state level, we're trying
2 right now to get FHWA, which is federal highways,
3 Fish and Wildlife Service and NMFS together to sit
4 down at an upper level management group and
5 discuss issues, expectations of the resource
6 agencies. Maybe even get to issues down the road
7 of the amount of analysis necessary for cumulative
8 and indirect impacts. Things that have been kind
9 of grating between our staff.

10 So if we can get some kind of uniformity
11 in the area, I think that will streamline things
12 considerably.

13 We also are part of an MOU for the NEPA
14 404 process, as brought up earlier; whenever you
15 impact the waters of the United States you have to
16 get a 404 permit. And if it's a particular level,
17 individual permit.

18 It's pretty time consuming. This MOU
19 was put together with FHWA, EPA and the Corps to
20 work together for resolution of those issues.

21 Training and staff development is
22 another thing we're doing resources. For example,
23 we are funding and participating in training for
24 designing culvert passage for fish passage. We
25 want to do more and more of that.

1 It was very interesting from the
2 standpoint of Fish and Game. They're interested
3 in some of our hydraulics engineers giving them
4 training, and our hydraulics engineers are very
5 interested in designing fish passage. That way we
6 take the burden, using the standards that the
7 resource agencies would use, Fish and Game and
8 NMFS, and designing to that level. It cuts down
9 the amount of consultation that will take place.

10 And once there's some trust built up,
11 that in fact we do know how to design these
12 things, I think consultations will go much
13 quicker.

14 We also involved ourselves in the
15 biodiversity council, California Biodiversity
16 Council, as well as Department of Fish and Game,
17 or I should say the resources fish passage work
18 group.

19 We're trying to show that we, in fact,
20 want to be stewards, better stewards of the
21 environment. And I think we're making major
22 contributions to those.

23 Next slide, please. This is the liaison
24 position I was talking about earlier. The
25 previous positions were we sent some money over

1 and said basically, you know, hire a few people
2 and see if that can help.

3 We have two inhouse liaison positions
4 with the Coastal Commission and the Corps of
5 Engineers that have just worked very very well.
6 What they do is they facilitate the review of the
7 Caltrans projects, and most importantly, they
8 provide CT staff information regarding agency
9 information needs.

10 For example in the Corps of Engineers,
11 in district 4, which is San Francisco, we have
12 about 25 engineers putting together Corps of
13 Engineer permits. And obviously you get 25
14 different ones every time.

15 So the staff that we have over at the
16 Corps basically said you're going to run
17 everything through me, these are the resources I
18 need. And until that time it doesn't go over to
19 the resources agency.

20 So, that's actually very good because it
21 puts the onus on us in terms of putting an
22 appropriate permit together. A very useful
23 position. It's something I probably would push
24 for for other additional positions going over to
25 the resource agencies in complement to the

1 previous ones.

2 I look at these as being people that can
3 kind of push things around, get the trust and be
4 trusted by the resource agencies so that they see
5 they do have their interests at heart.

6 And maybe additional positions to go for
7 technical kinds of things such as biologists, et
8 cetera, to do work.

9 Next slide, please. Programmatic
10 approaches. We have quite a few programmatic
11 approaches and as you see it says establish
12 agreed-upon procedures and applicability to a
13 level effect on a resource.

14 We have quite a few of those. This is
15 only a small list of them. They have to do with
16 covering early and continuous coordination. I
17 think some of these are some that we have not
18 visited, and need to go back again.

19 We have the valley elderberry longhorn
20 beetle. That helps us a lot. Our districts know
21 exactly what they need to do if they're going to
22 cut a particular size of elderberry bushes, et
23 cetera. We can move ahead with that, and we know
24 how to operate on that.

25 Desert tortoise, same thing. We are

1 developing one on salmonids right now, with NMFS,
2 and kit fox with Fish and Wildlife Service, as
3 well as a whole programmatic having to do with 106
4 under the cultural and archeological areas.
5 Individual districts also have put MOUs to make
6 things go quicker.

7 Internal. This is probably one, it
8 doesn't strike strong outside the organization,
9 but this is a huge difference in how we do
10 business. I alluded to it earlier.

11 This implementation of a change control
12 policy, and it also basically said, you're going
13 to advance the environmental input well into the
14 planning process, that's back at that PID/PSR
15 stage. Get that information so that you have
16 better scoping and scheduling.

17 It'll ID and it'll allow us to avoid and
18 minimize resources -- excuse me, environmental
19 resources. It also will allow us to develop
20 better assessments earlier of cumulative impacts.
21 Because this, you know, or you may not know, as we
22 put a project down, a lot of other things happen.
23 Or locals put down a project and a lot of things
24 happen in response to that.

25 Depending on what side of the street you

1 stand on, it's a matter of which one you consider
2 cumulative impacts or indirect, et cetera. But we
3 have to deal with those. We recognize we have to
4 have a good way to analyze those, and come up with
5 some solutions.

6 We are also increasing the use of GIS
7 technology, developing databases. It was brought
8 up to CNDDDB. We will be adding additional
9 resources to Fish and Game. It is one, I think,
10 they have in the neighborhood of, I don't know, 10
11 or 12 thousand records still sitting out there.

12 We use it to look at our projects early
13 on, and overlay the various layers, one of which
14 is CNDDDB, and see if there's endangered species.
15 That does not mean that if there isn't a little
16 circle or a spot on our project that is cleared,
17 it just basically says that there's no known at
18 this point reported. And so it allows us to
19 design and maybe speed up what we do out there in
20 terms of surveys.

21 Locks in project design. This is a huge
22 issue for Caltrans. Over time, as I said earlier,
23 we have what we call project development teams.
24 Part of that is the environmental and design. And
25 the design goes off and they start building

1 project A, point A to point B.

2 And the environmental group goes out and
3 starts analyzing point A to point B.

4 Unfortunately, somewhere down the pike, a year,
5 two years, whatever the case may be, design is now
6 working on project prime, meaning it's a different
7 project.

8 They've added in, for example, an
9 interchange at the request of the locals. Very
10 logical if you do that. However, the
11 environmental process is now stopped because you
12 have to go back and re-do your environmental
13 analysis.

14 So, when we make those decisions now,
15 given the fact that we have to deliver, and that's
16 our key thing, if we want to do that, fine. But
17 it's an informed decision. We go back and do the
18 appropriate environmental analysis and off we go.

19 This is something that, and recently we
20 had a survey done and we found that about 80
21 percent of all our projects that were considered
22 environmental issues were, in fact, design change
23 issues.

24 So, this is really a manifestation of
25 the change of what my management, which I call

1 kind of the greening of the management, in the
2 design area underneath the deputy that I work for.
3 He recognizes environmental is very important.
4 And this is a manifestation of that, meaning we do
5 not want to address environmental issues, in fact,
6 if they're design. So it's a big streamlining
7 issue.

8 Okay, standard environmental reference.
9 We are developing a standard environmental
10 reference. We have 12 different districts. And
11 I'll probably put the same one, the next one on
12 standard format for environmental documents,
13 that's NDs and above.

14 And when you have 12 districts it's very
15 difficult for the various resource agencies and
16 FHWA, who is our federal nexus to federal resource
17 agencies, to have a clear understanding of what
18 we're trying to say, because the documents are
19 different.

20 You look in one section and looking for
21 mitigation, it's not there. It's in another
22 section. Or it's in three different sections. So
23 this is streamlining the action that we're taking.

24 Increase the quality of our documents.
25 This is very important when we do a biological

1 assessment. We are assuming, and pushing much
2 harder for our staff people to be dealing with the
3 resource agencies so that we know in our
4 consultation what they're going to require.

5 If we do our BA correctly, it's very
6 easy, I think to change that into a BO, biological
7 opinion, just by stating what we've already put
8 there. And that's another thing that we're going
9 to be trying to do. Focused environmental
10 documents has basically cut down on all the
11 rhetoric.

12 Mitigation banking and process
13 improvements. This is one you've all pointed to.
14 And while it's just a line, it's a huge thing
15 going on in Caltrans.

16 We are redoing our project development
17 process to incorporate mitigation very early on.
18 And more importantly, we want to get out of the
19 mitigation business, basically; we do not want to
20 have one- and two- and three-acre plots sitting
21 out there. Because frankly, we don't maintain
22 them very well. We do really well on potholes,
23 but we don't do very well on mitigation sites.

24 And I think we need to recognize that.
25 And while we have a lot of successes, we have some

1 that are not so.

2 So we would like to set up mitigation
3 teams as part of what I call the project
4 development team during the development that will
5 initiate looking at whole areas, including the
6 local projects. Because local projects have
7 mitigation requirements, as well as do our
8 projects, if you can avoid them through the early
9 consultation. It's inevitable you're going to
10 have some mitigations.

11 The idea is to have something in place
12 ahead of time. So that as mentioned earlier,
13 mitigation becomes a very, you know, kind of a
14 mundane issue.

15 And in the past it never really is
16 because the engineers say, you mean they want
17 three-to-one, and that costs how many dollars.
18 We've really gotten past that. We're now looking
19 at how can we set up banks, how can we buy into
20 cooperatives, how can we work with the locals to
21 develop large HCPs because they're normally under
22 section 10 situations. And how can we mix those
23 with things like the Nature Conservancy and get
24 big bangs for the bucks.

25 Summary. Recognize the difference in

1 our perspectives and missions with the
2 participants. Involve resource agencies as early
3 as possible. I can't, you know, stress that
4 enough. Provide resources if they're needed.

5 I don't think, with the level of program
6 that Caltrans has, Fish and Wildlife Service or
7 NMFS or EPA are not going to get adequate funding
8 and resources to meet our needs. If we really
9 want to deliver these projects we're going to have
10 to provide some kind of resources.

11 Another very important part, make
12 resource agencies true stakeholders and partners
13 in your project. That really means that when you
14 come and talk to us at the PID/PSR stage, it
15 isn't, well thank you for coming on over, and keep
16 your project. Not worry about what was said.

17 We really are looking at making them
18 part of the project, and as I talked about
19 earlier, with enhancements I think that's a lot
20 easier. Because the resource agencies will see
21 opportunities for enhancements, just not
22 mitigation, and just not your project.

23 And that basically covers it.

24 PRESIDING MEMBER LAURIE: Thank you,
25 Gary, very much.

1 DR. TOOKER: Thank you. We do have one
2 other item in the morning session. The Committee
3 may want to consider putting this off till after
4 lunch, and that is public comments.

5 PRESIDING MEMBER LAURIE: Well, let's
6 ask the public, is there anybody here who's not
7 going to be here this afternoon, that would like
8 to offer comment at this time?

9 If not, we'll have plenty of opportunity
10 for public comment this afternoon.

11 Thank you to the panelists. Very
12 important and very informative. And we'll see
13 everybody back here at 1:30.

14 COMMISSIONER PERNELL: Thank you.

15 (Whereupon, at 12:30 p.m., the workshop
16 was adjourned, to reconvene at 1:30
17 p.m., this same day.)

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1 AFTERNOON SESSION

2 1:25 p.m.

3 DR. TOOKER: We'll begin with
4 introductions, starting from my left.

5 MR. HAWKINS: Hi, I'm Bob Hawkins with
6 the United States Forest Service based here in
7 Sacramento.

8 PRESIDING MEMBER LAURIE: Thank you,
9 Bob.

10 (Off-the-record discussion.)

11 DR. TOOKER: Okay, the second person?

12 MR. MARTI: I'm Duane Marti from the
13 Bureau of Land Management, U.S. Department of the
14 Interior, also here in Sacramento.

15 PRESIDING MEMBER LAURIE: Thank you,
16 Duane.

17 MR. QUESENBERRY: I'm Steve Quesenberry,
18 I'm with California Indian Legal Services.

19 PRESIDING MEMBER LAURIE: Thank you,
20 sir.

21 MS. WERDEL: Nancy Werdel, Western Area
22 Power Administration.

23 PRESIDING MEMBER LAURIE: Thank you,
24 Nancy.

25 DR. TOOKER: Thank you. And this

1 afternoon we will be talking about interconnection
2 requirements and land use approvals, and not
3 interconnection requirements in terms of
4 transmission system impacts that we usually
5 discuss, but environmental review requirements,
6 which I think Nancy will be talking about,
7 involved with WAPA.

8 And we will start off with a
9 presentation from Nancy.

10 MS. WERDEL: I did bring some overheads
11 and you should have some copies of that.

12 So, the first thing that I wanted to
13 talk about was kind of just some general NEPA
14 things, just to kind of get you familiar with the
15 role of the lead federal agency under NEPA.

16 First of all, the law requires that the
17 federal agencies, they designate a lead federal
18 agency. And that is determined by these things,
19 the magnitude of agency involvement, approval
20 authorities, their expertise. A lead agency could
21 request expertise from another federal agency for
22 reviews if they have a specific expertise.

23 For instance, the Forest Service, if
24 they were having a transmission system built on
25 their land, they would be the lead federal agency.

1 They could come to Western for expertise in that
2 area, to help them with their analysis.

3 Then the duration of the involvement and
4 then sequence of involvement.

5 Now, some of the things that spark that
6 federal nexus is if there's land; if it will
7 affect any kind of federal systems that are in
8 place; or any kind of other impacts to federally
9 owned facilities.

10 There's a cooperating or joint lead
11 agency when there's more than one federal agency
12 and/or includes a state or local government
13 agency.

14 You could choose to have cooperating
15 status with the state or federal agency depending
16 on those other factors that are involved in there

17 Then they could have legal reasons for
18 being involved. And like I said, the expertise.

19 The other thing is this is a lead
20 federal agency's responsibility to make sure that
21 all the federal laws and regulations are complied
22 with. And that includes everything, including
23 Fish and Wildlife Service consultation, NMFS
24 consultation, cultural resource consultation,
25 permits from the Corps of Engineers for Clean

1 Water Act, EPA permits and then government-to-
2 government relations with Native Americans.

3 One of the things I wanted to say about
4 the permitting requirements is the way that
5 Western's been working, is the applicant is
6 required to work with that agency, the Corps and
7 EPA to get those permits. And we don't really
8 have any involvement in those, getting those.
9 Other than EPA wants to know that there's a lead
10 federal agency involved.

11 And so as long as there's a lead federal
12 agency involved we let the applicant work out the
13 permit with them.

14 And on occasion we discuss issues about
15 mitigation and compliance, and federal authority
16 to act on that, on those requirements that are in
17 the air permit, for example. So, that's just kind
18 of an overview of the federal process.

19 So then kind of go into Western's
20 process. Under our open access tariff, Western
21 developed our general requirements for
22 interconnection. I don't know if you've ever had
23 the opportunity to look at this. It is on our
24 website, but --

25 PRESIDING MEMBER LAURIE: What's the

1 title of that document?

2 MS. WERDEL: It's called general
3 requirements for interconnection. This is
4 basically an instruction book to an applicant when
5 they want to interconnect to Western's system.

6 And it goes through the process. You
7 can take that up to them so you can kind of look
8 through that. And, like I said, it is on our
9 website.

10 And basically what that does is it just
11 outlines all the steps that the applicant has to
12 go through. And there's a couple of key things
13 that I wanted to point out from that.

14 And one of those is the system studies.
15 Western prepares system studies for impacts on our
16 transmission system and the surrounding system as
17 part of the interconnection process.

18 We also require the applicant to abide
19 by the federal laws and regulations under like
20 NEPA, as part of that interconnection agreement.

21 Another thing that we have them do is
22 that we enter into an agreement with them, a
23 letter agreement, and basically make them
24 reimburse us for all the funds that we expend.

25 And that could be one area where we are

1 looking into how do we help some of the other
2 agencies to do that. If we have, like for
3 instance, we have about -- we have too many, but,
4 connections that are ongoing, but we have three
5 that are either filed or about to be filed.

6 And we could potentially fund a position
7 at Fish and Wildlife Service, for instance, to
8 help with those requirements for those three
9 sitings.

10 How Western has streamlined the process
11 is first of all we recognize that under NEPA there
12 is requirements to streamline and provide the
13 public with the greatest due process that's
14 allowable. And because of that, we opted to work
15 hand-in-hand with the Energy Commission to
16 streamline that.

17 So what we have done in the past on the
18 Sutter Power Plant, we prepared a joint document
19 and did a joint EIS and I think that you were
20 involved in that, Sutter, I think.

21 And so we provided review of the
22 document, all the different documents that the
23 Commission put out. We didn't duplicate anything,
24 we just tried to work with it.

25 There's a couple of areas where the

1 federal agencies are more interested in than other
2 areas, and we tried to basically concentrate on
3 those areas.

4 And those areas include the Fish and
5 Wildlife areas and make sure that we complete our
6 section 7 consultation. And then the cultural and
7 historical resources, make sure that we complete
8 our consultation requirements under that.

9 So what we do basically in the process
10 is that we come up with a memorandum of
11 understanding between the CEC and Western. And I
12 don't know if -- have you ever seen a copy of that
13 MOU that we produce?

14 PRESIDING MEMBER LAURIE: I have seen
15 it, yes.

16 MS. WERDEL: Okay. That MOU, basically
17 it designates the CEC as the state lead and
18 Western as the federal lead. It outlines all the
19 technical and administrative responsibilities of
20 each of the agencies, and how we're going to
21 interact.

22 It also designates that, you know, we'll
23 have public meetings for -- that are joint public
24 meetings for our scoping requirements under NEPA,
25 as well as our public meetings on our draft and

1 final documents.

2 And those were both used on both Sutter
3 and Blythe.

4 One of the things that we've done to
5 streamline, as well, is the last thing that we
6 started off this process doing an EIS. Our
7 implementing regulations require us to do an EIS
8 for siting of power plants.

9 And based on our results that we had
10 from the Sutter Power Plant, we went back and
11 looked at our regulations and said, is there some
12 other way that we can look at it.

13 And we did find, in our regulations, the
14 sentence that says: Extraordinary circumstances
15 related to the specific proposal that may affect
16 the significance of environmental impacts of the
17 proposal.

18 That you could -- this is generally
19 interpreted that if you have some kind of
20 significant impacts that you're doing for an EA,
21 that you would increase the level of rigor and do
22 an EIS.

23 But we also looked at it and said, well,
24 we could also say that because of the CEC's
25 process that allows us to -- that basically

1 doesn't really allow -- they mitigate for all of
2 the impacts, that we could use this in kind of a
3 reverse and say that because of that process we
4 can say that we can back down and only do an
5 environmental assessment.

6 This has saved a lot of time because
7 when we do an EIS, because of the way that the
8 processes work out, as you're aware of on Sutter,
9 at the end of the staff assessment process Western
10 had to kind of break off and produce it's own
11 final EIS.

12 And it took us a long time at that point
13 in time to do that. And to get that completed.
14 And it just -- it didn't work real well. Because
15 then we tried to go back to the regular NEPA type
16 of document, and it was very difficult.

17 And we were trying to address EPA's
18 comments on the document, as well. So this is one
19 thing that we've significantly, we've really cut
20 down a lot on our efforts into doing this.

21 And if any of the other agencies have,
22 you know, similar type language in their
23 implementing procedures, they might look at that,
24 as well. It really did help.

25 And we have done that on Blythe, and we

1 will be doing that on the next three that we have
2 coming to the Commission.

3 The last thing I wanted to talk about is
4 this little two-page handout. This is -- every
5 quarter the Department of Energy issues a lessons
6 learned document. It's all Department of Energy
7 wide.

8 And it's kind of a sharing type thing.
9 This is what we learned from doing these
10 processes.

11 And this section here was talking about
12 a couple of power plants, one, the Griffith Power
13 Plant was in Arizona. And then the Sutter, which
14 was here in California.

15 And it just kind of talks about the
16 different things that we found challenging in
17 integrating the two processes. And I'd just kind
18 of like to speak to a couple of those.

19 First of all, the process that the
20 Commission has where it's kind of judiciary in
21 nature, where the staff are giving testimony.
22 Occasionally we had problems with the staff
23 accepting comments from the federal agency, and
24 incorporating that into their testimony, because,
25 you know, they have some ownership in that.

1 And we were able to work through that,
2 but we have a couple of areas where that didn't
3 work real well. And where the federal and the
4 state have maybe some difference of opinions on
5 the level of significance of the impacts.

6 And so that's something that we work on
7 now to try to address more, a little bit better.

8 And then I mentioned the document
9 problems where we had producing documents, and not
10 meeting the EPA suggested format for an EIS. And
11 I think we've come a long way since then. And I
12 know that EPA has become much more educated about
13 CEC process. And if we had to do an EIS for some
14 reason, I don't think that that would be a
15 problem. We learned a lot to work with them
16 sooner.

17 PRESIDING MEMBER LAURIE: Nancy, --

18 MS. WERDEL: Sure.

19 PRESIDING MEMBER LAURIE: -- when you do
20 your environmental analysis, and much of the issue
21 goes to how to avoid being duplicative, is there
22 anything in NEPA, as you might be aware of, that
23 allows reliance upon previously accomplished
24 environmental documentations such as a document
25 produced by the Energy Commission, so that if the

1 Energy Commission were to do the environmental
2 analysis, or incorporate the environmental
3 analysis that you would ordinarily do independent,
4 then does that negate the need for you to do an
5 independent document? Can you issue a negative
6 dec or something like that?

7 MS. WERDEL: It depends. For instance,
8 if, at some point down the process when you finish
9 the document -- you've got a finished document,
10 and then you come to the federal agency.

11 The federal agency can adopt what's
12 already been done. But in order to do that they
13 have to look at it, make sure that all of the
14 requirements of NEPA have been addressed.

15 And if they haven't, then there may be
16 some other issues that you have to address.

17 PRESIDING MEMBER LAURIE: Okay, so to
18 the extent that there's cooperation between your
19 entity and the Energy Commission, and by the time
20 we get done with our documentation, do you know
21 what's in it because you basically helped to write
22 it, so by the time you get it, the goal is to be
23 able to make it easy for you simply to adopt the
24 documentation previously accomplished? Is that
25 reasonable to say?

1 MS. WERDEL: Well, I think that's a
2 little confusing, because when we're in the
3 process together, we issue a joint document. So
4 we're not adopting anything. It's our document
5 from the beginning. It's a joint document. So
6 we're not adopting anything.

7 Where we would end up adopting it, if
8 for some reason at the very -- after we've made
9 the decision, say, there's a transmission line
10 route that turns out to cross BLM's land.

11 BLM could adopt the EIS or EA that we've
12 already prepared, and that would say that there's
13 not any more additional things that they would
14 need to do.

15 Does that make it clear for you?

16 PRESIDING MEMBER LAURIE: Yes. That's
17 helpful, thank you.

18 DR. TOOKER: I have one question of
19 clarification. In the case where you, in the
20 Sutter case where you had an MOU with the Energy
21 Commission, there was then a document that you
22 focused on as being a joint document? Or was it
23 our process?

24 MS. WERDEL: The final staff assessment
25 was our draft EA.

1 DR. TOOKER: Okay, and then you took
2 that and went through the development of the
3 final?

4 MS. WERDEL: We had a little bit of
5 problem. Why we ended up doing that was because,
6 well, I should say the draft EIS. We had done an
7 EIS on that process, and we had a little bit of
8 issue with the way the Energy Commission's process
9 goes at that point in time, being the next step is
10 the Presiding Member's Proposed Decision.

11 And under NEPA you don't make a decision
12 until you had full comment period on the draft and
13 final EIS.

14 So we had to kind of break out that
15 point and do a final EIS. Produce that. That was
16 not a decisionary document. And then come back
17 and allow public comment on that document. And
18 then write a record of decision off of that
19 document.

20 So it was very confusing.

21 DR. TOOKER: Thank you. And we learned
22 from it, then?

23 MS. WERDEL: Oh, yes, and that's why
24 we're doing EAs pretty much now.

25 DR. TOOKER: Thank you.

1 PRESIDING MEMBER LAURIE: Thank you,
2 Nancy, very much.

3 MR. WOLFE: Um-hum.

4 DR. TOOKER: The next two presenters, we
5 have Duane Marti and Bob Hawkins, I've been told,
6 are going to kind of do a joint presentation, to
7 eliminate duplication.

8 They speak different languages but they
9 do similar things. So I guess I'll turn it over
10 to Duane.

11 MR. MARTI: Thank you.

12 PRESIDING MEMBER LAURIE: Good
13 afternoon, Mr. Marti, how are you?

14 MR. MARTI: Fine, sir. We have a three-
15 page handout that you're getting a copy of now.
16 As he indicated, the Forest Service and BLM are
17 land managing agencies, not regulatory agencies,
18 so we have a very similar process. And we
19 figured, rather than I stand up here and Bob comes
20 along and says basically the same thing, we'd just
21 do the joint presentation. And we're both
22 available to answer questions in particular.

23 PRESIDING MEMBER LAURIE: And where are
24 you located physically?

25 MR. MARTI: I'm here in the California

1 State office, which is located off of Cottage Way.
2 And then Bob is located at the old federal
3 building downtown here.

4 PRESIDING MEMBER LAURIE: And, Nancy,
5 are you in Sacramento, are you up here?

6 MS. WERDEL: Our office is out in Folsom
7 by the ISO.

8 PRESIDING MEMBER LAURIE: Okay.

9 MR. MARTI: As you know, earlier this
10 year Governor Davis sent a letter to President
11 Bush requesting that the federal agencies assist
12 in expediting the process here in California.

13 And in response to that letter President
14 Bush, on February 16th, issued a presidential memo
15 to the Secretary of Defense, Interior,
16 Agriculture, Commerce and also the administrator
17 of the Environmental Protection Agency in which he
18 directed all the federal agencies to expedite
19 permit review and decision documents relating to
20 power plant siting and related facilities here in
21 California.

22 Subject to remaining consistent with
23 statutes, insuring protection of public health and
24 environment, and appropriate opportunities for
25 public participation.

1 PRESIDING MEMBER LAURIE: You know, I
2 don't know if I've ever seen that. Have you seen
3 a copy of that?

4 MR. MARTI: I have a copy that I can
5 copy and I'll leave it with you, sir.

6 PRESIDING MEMBER LAURIE: That'd be
7 great, thank you.

8 MR. MARTI: As Nancy has already spoken
9 to, the fellow agencies when we're reviewing a
10 proposed action, of course we do it under the
11 National Environment Protection Act, NEPA, and of
12 course, the State of California would be doing it
13 under their CEQA action.

14 In this case, here in California, both
15 the Forest Service and BLM have conducted joint
16 reviews under both NEPA and CEQA, which has led to
17 could be joint documents, EIS/EIR or EA and what's
18 the complement of an EA, always forget --

19 MR. HAWKINS: We do joint EAs and EIRs,
20 or negative decs.

21 MR. MARTI: And obviously, one of the
22 questions I think you were alluding to was one of
23 the advantages of the joint review is, of course,
24 then the mandated actions, like the public scope
25 being public review, public comment period thing

1 can be done together, instead of us having a
2 meeting, Nancy's group having a meeting, and then
3 CEC having yet a separate meeting.

4 And she pointed out one of the real
5 things that we find in joint things is you must
6 very clearly designate who the lead agencies are.
7 And I think Nancy did an excellent job on that.

8 We have found that once you have clearly
9 demonstrated who the lead agency is, and then the
10 other agencies understand, it makes the process
11 work a lot easier.

12 PRESIDING MEMBER LAURIE: And under all
13 circumstances it must be a federal agency?

14 MR. MARTI: Well, for NEPA it would be,
15 and for the state side it would be a state agency.
16 We have had processes down in our Bakersfield
17 office where actually the state has been taking
18 more of a lead. We've been using your documents
19 to work under NEPA.

20 But, I --

21 MR. HAWKINS: I think there would be a
22 lead federal agency, even if it was a joint
23 document.

24 MR. MARTI: Yes.

25 PRESIDING MEMBER LAURIE: So, I guess

1 the question is that if there is a state process,
2 and the nexus with any federal issue, bringing in
3 the forces of NEPA, but only incidentally, that
4 would still require a NEPA document. And it would
5 still require some federal agency to be lead
6 agency even if the federal issue is 1 percent of
7 the issue?

8 MR. MARTI: That would be correct, but
9 we could -- what we have done, BLM has done in the
10 past in that situation is we will use the CEQA
11 document and incorporate by reference into the
12 NEPA document.

13 We actually take sections of the CEQA
14 document, use those as exhibits, summarize it, put
15 it in our document. Show where it could be found
16 in the CEQA document, and actually using your
17 work. Not going out and duplicating the work.

18 MR. HAWKINS: And I think the nexus
19 would hinge on that small percentage, as you
20 suggest in your example, say, if it was involving
21 federal lands administered by the Forest Service
22 or BLM, that also would limit the scope of the
23 decision tied to that connection.

24 It's like Duane's explaining, our role
25 would be fairly small.

1 MR. MARTI: Because one thing, at least
2 for BLM, when we're looking at the fellow agency,
3 we're looking at who has the sort of preponderance
4 of the work or the responsibility. Unless, of
5 course, of other workload and they can't do it,
6 then we may have to negotiate among ourselves.

7 I know we would not have a problem with
8 working with the state in that capacity.

9 You had asked the question of Nancy
10 earlier about if there are existing NEPA documents
11 out there, or CEQA documents, can they be used.
12 And her answer was it depends.

13 And basically it depends on we must go
14 in and review it as to its adequacy under NEPA.
15 We actually do what we call documentation of NEPA
16 adequacy.

17 And generally we find older documents
18 are usable if the current proposed action was
19 clearly analyzed, the resource conditions and
20 circumstances are basically unchanged from when
21 they were being analyzed, and no new significant
22 or appropriate alternatives have been identified
23 by the public.

24 The problem is a lot of times we're
25 dealing with a document that may be 15 years old,

1 and there's a lot of things that have changed.

2 And we need to go back and look at them.

3 But they're still a valuable source of
4 information because they're giving us a snapshot
5 of what was done 15 years ago, 10 years ago.

6 So we would be using those. It's just
7 we have to look at them to see how adequate they
8 are, as Nancy was explaining, to meeting the needs
9 now of NEPA.

10 Is that true on the state side? If you
11 have an older CEQA document that you can use it in
12 the same way?

13 PRESIDING MEMBER LAURIE: You have to
14 determine whether or not there have been
15 significant changes in the project. And if so,
16 you do a subsequent environmental impact report.

17 And I'll look in the audience and see if
18 my legal counsels are shaking their head. I think
19 that is pretty close.

20 But you can certainly use it. So you
21 use it as a foundational document. You determine
22 changes in circumstance. Then you do a subsequent
23 EIR examining the changes in those circumstances.

24 MR. MARTI: If we determine that the
25 document is usable and is adequate --

1 PRESIDING MEMBER LAURIE: Correct, and
2 if --

3 MR. MARTI: I mean if we find out no, it
4 is not usable, then it would be easier just to
5 start over and do something new.

6 PRESIDING MEMBER LAURIE: Correct,
7 that's right.

8 MR. MARTI: One thing that we would
9 really want to emphasize, and we have found this
10 to be true in the ongoing joint reviews that we've
11 done in the past.

12 For BLM and for Forest Service to be
13 able to do timely project review we need to have
14 good project information. We need a good basic
15 map, where are we talking about.

16 What is the project going to be. What
17 is your proposed timeframes. Are you looking to
18 construct this in three months, three years,
19 whatever. And are there relevant NEPA, CEQA
20 documents out there.

21 That's really crucial to come in early
22 with those, because we have found early
23 consultation, talking with either the state
24 agencies or the project proponent, allows us to
25 help you develop the best first proposal.

1 We can look at something and say, you
2 know, if you're going to put your route here
3 across BLM land, Forest Service land, that's going
4 to be a problem because we already know there's
5 desert tortoise out there. Or we know there's
6 something out there. But if you move it over here
7 20 miles, or something, there won't be that
8 problem.

9 So, it's one thing that when we were
10 working on our presentation and we totally agreed
11 on, was the earlier you can come in with the most
12 complete information, we are more than willing to
13 sit down and talk with you and try and work that
14 out. And that's important.

15 MS. TOWNSEND-SMITH: How long does it
16 usually take for a review of a document once it
17 enters your shop?

18 MR. HAWKINS: To actually process a
19 project proposal, is that probably more what --
20 you know, a complex power line, transmission line,
21 say across multiple forests or forests and BLM
22 would easily, I think, be a two-year process.
23 Just based on the complexity of most of those
24 processes.

25 MS. TOWNSEND-SMITH: So you don't have a

1 definite timeline?

2 MR. HAWKINS: No. I think it's
3 controlled more by the issues, how long it takes
4 to resolve, or do the environmental studies,
5 respond to issues that are raised by the public
6 during scoping. And analyze those issues, work
7 through alternatives.

8 MS. TOWNSEND-SMITH: Would you be able
9 to respond to an expedited siting process? For
10 instance, a 21-day process, or a four-month
11 process? Would that be do-able for your
12 organization or agency to review?

13 MR. HAWKINS: When you say respond, are
14 you saying that you want us to do a review, or you
15 want us to be able to issue in the case of a
16 right-of-way, or a grant?

17 MS. TOWNSEND-SMITH: Okay, we'll go that
18 far, issue a right-of-way or a grant.

19 MR. MARTI: I think Bob's answer, it
20 depends, is very crucial, because without really
21 knowing the situations, the issues that we're
22 looking at, and with the result of the public
23 scoping, it's very hard for us to say yes or no on
24 that.

25 MR. HAWKINS: And I think something that

1 really plays into the timeline is the
2 administrative appeals process that we've got, the
3 administrative review process for any decision for
4 a project that would require an EA or an EIS.

5 And even at its shortest, if someone
6 were to exercise their appeal rights, it would
7 take 135 days from the time the document was
8 available for review until the agency could
9 actually implement, if there was an appeal.

10 PRESIDING MEMBER LAURIE: Give me those
11 times again?

12 MR. HAWKINS: It's around 135 days. We
13 can provide more detailed information if you're
14 interested.

15 MR. MARTI: Appeals is one of the areas
16 where the two agencies have very different
17 procedures. In our case, if I issue a document, a
18 decision, we're granting a right-of-way to say
19 Duke Power to build a power line.

20 Anyone who feels that they have been
21 adversely affected by that decision has the right
22 to appeal within a 30-day period. And with that
23 they can also request a stay of the project.

24 However, the burden of the proof on
25 getting the stay rests on them. And that decision

1 is made by the Interior Board of Land Appeals,
2 which is back in D.C.

3 PRESIDING MEMBER LAURIE: Do you have to
4 put up a bond?

5 MR. MARTI: The person appealing?

6 PRESIDING MEMBER LAURIE: Yes.

7 MR. MARTI: No. But if we can show that
8 it's in the public interest not to do the stay, we
9 can maybe get the thing not granted, and the
10 project would go in full force and effect.

11 Once it goes to IBLA, if we do not
12 request an accelerated hearing schedule, it could
13 take up to two years to get a decision out of it.

14 MS. TOWNSEND-SMITH: What's IBLA?

15 MR. MARTI: Interior Board of Land
16 Appeals. It's a section, part of the Department
17 of the Interior, actually reports directly to the
18 Secretary. It is not controlled by any of the
19 agencies. And any decision that BLM has made may
20 be appealed to IBLA.

21 And 43CFR4 is the controlling legal
22 documents for IBLA.

23 MR. HAWKINS: As we said, we have been
24 directed by the --

25 PRESIDING MEMBER LAURIE: And what about

1 Forest Service?

2 MR. HAWKINS: Yeah, our process would
3 start at the point of decision, there's a 45-day
4 appeal period. It's an internal process, so the
5 appellant would go to the next higher decision
6 authority within that 45 days there's a --
7 followed by a 45-day decision review process.
8 With a mandatory stay.

9 And then after the decision is rendered
10 on the appeal, if the decision's to go forward,
11 there's a 15-day waiting period before
12 implementation. That works out to about 105 days.

13 We also have a 30-day requirement prior
14 to making the decision to provide our documents
15 for notice and comment to the public.

16 If you add all those days up, the
17 fastest timeline would be 135 days.
18 Realistically, it goes longer.

19 PRESIDING MEMBER LAURIE: Do you have,
20 in your offices, where in one office you have a
21 map of all BLM lands in California; in another
22 office you have a map of all Forest Service lands
23 in California?

24 MR. MARTI: Yes.

25 PRESIDING MEMBER LAURIE: Do you have

1 templates or overlays where because of certain
2 conditions, endangered species, certain terrain
3 features, any kind of development is virtually
4 impossible?

5 And then do you have designated areas,
6 for example, a land use map, do you have a land
7 use map of Forest Service or BLM lands where folks
8 can come in and take a look and say, well, I won't
9 even bother because that area is painted orange,
10 and you simply can't do orange?

11 Do you have anything as simple as that?

12 MR. HAWKINS: The more specific your
13 questions become the closer to the forest you have
14 to go to get the answer. We do, in our regional
15 office, maintain status atlases that have all the
16 national forest lands in California, the status of
17 those lands, existing encumbrances and right-of-
18 ways.

19 We also have copies of the forest land
20 management plans which would be that kind of the
21 broader scale map that you're talking about. We
22 have that in Mare Island at the regional office.

23 As it gets closer to specific resource
24 concerns, if you want a T&E habitat, you know, the
25 critical river areas, those sorts of things,

1 that's typically kept at the field level, at the
2 individual national forest offices.

3 But that's typically what we do with
4 project proponents when we ask for early
5 consultation, is we meet with them. We review the
6 existing information that we have. And it's
7 typically getting more and more towards the GIS
8 approach where you can call up those types of --
9 those layers -- and we work with them to try to
10 avoid those places which are a definite no-go,
11 such as wilderness.

12 MR. MARTI: Yeah, wilderness areas,
13 wilderness study areas of BLM, wild and scenic
14 rivers, areas like that definitely we can't do.
15 The only way we could do any kind of project work
16 in there would be Congressional authorization,
17 which would be another act of Congress, which I
18 wouldn't even guess how long that would take.

19 But we can, like Bob says for the
20 forest, we could do the same thing with BLM. And
21 we also have GIS that allows us to do that.

22 Your question leads in very nicely to
23 our next point that we were about to make, was
24 that a lot of the land use plans that both the
25 Forest Service and BLM have developed here in

1 California have designated energy reduction and
2 utility corridors shown on them. Not all of the
3 maps, but some of them do.

4 And that is a tool. The way that was
5 done, it was done in the early 1990s when the two
6 agencies were working with utility groups, state
7 governments, local governments, companies and
8 whatever. We were trying to identify these
9 corridors to make it easier.

10 And the corridor is set up, is more of a
11 tool for allowing us to sort of guide the
12 environmental review. Allows us to go out there
13 and say a lot of work has been done, we can figure
14 out what work needs to be done. Based on what you
15 were asking before, we can build on this material.

16 It is not, although, an automatic grant
17 of a right-of-way in our case, or an easement,
18 just because you're going to be in a corridor. We
19 still need to revisit and look at the
20 environmental, though.

21 If you get outside of the corridors, at
22 least in the case of the BLM, we're going to have
23 to do a plan amendment, and that's going to be a
24 minimum of probably three months.

25 So, if you can stay inside the corridors

1 that makes life a lot easier. And I think the
2 same thing would be true for the Forest Service.

3 MS. TOWNSEND-SMITH: Is this something
4 that the developers request in advance? I mean do
5 they come to your agency and ask for a map that
6 actually shows where they can and cannot build?

7 MR. MARTI: If they come to BLM, yes, we
8 could provide that. And we could also provide --
9 there are maps that came out of this 1992 western
10 utilities group study, which I have copies at my
11 office, that shows the broad corridors.

12 Nancy and I were looking at some of the
13 maps that WAPA has, and she has some of the
14 corridors shown. I'm not sure if you have all the
15 corridors here for California.

16 But that's something that could be made
17 available very easily.

18 MS. TOWNSEND-SMITH: That would be a
19 special request?

20 MR. MARTI: No, that would be just part
21 of the early consultation.

22 MS. TOWNSEND-SMITH: Is that something
23 that the CEC would have already? Do we have that
24 at our agency?

25 MR. MARTI: I would have to check with

1 your people. I could check and I'll get back to
2 you on that. If not, we can make copies.

3 I would suspect somewhere in this
4 building you have a copy of the utility study
5 group, the report, it's about yea-thick. I'm sure
6 it's sitting on someone's shelf. It's just
7 finding which shelf it's sitting on.

8 One thing, and I wasn't here in the
9 morning, but --

10 DR. TOOKER: Could I ask a follow-up
11 question?

12 MR. MARTI: Sure.

13 DR. TOOKER: You've talked about a lot
14 of information, GIS. Has there been any effort to
15 try to move this information into, you know, into
16 a website or things where it's more accessible?
17 Is that in the planning process, or an
18 expectation?

19 MR. HAWKINS: I'd have to check on that.
20 I haven't heard any move to put it on a website.
21 I have heard discussions in terms of coordinating
22 with the State of California and the series and
23 some of the other statewide databases.

24 DR. TOOKER: Okay, thank you.

25 MR. MARTI: It would be the same for

1 BLM. No, we don't have it on the website now, but
2 we are working with I know Fish and Game to
3 coordinate a lot of their GIS into our system.

4 It would be nice if we could do that
5 because then that would answer your question
6 directly where you just call up Yolo County, and
7 it would show all this information on it.

8 It would be nice if we had that. It
9 would be a really helpful tool to both the state
10 and the local agencies.

11 MS. WERDEL: And Western is working with
12 the Corps of Engineers on our GIS system. So all
13 of our transmission lines will eventually be on
14 their system.

15 MR. MARTI: As I said, I wasn't here
16 this morning, but I heard that one of the comments
17 that you heard was that the federal agencies, of
18 course, have other workloads facing them and
19 funding and that.

20 Bob and I are here to say that, you
21 know, BLM and the Forest Service, yes, we've been
22 directed by the President to work and help with
23 you folks on this, but we also do have our own
24 workloads facing us.

25 And unfortunately, both of us have sort

1 of a big project. In our case, BLM got sued by
2 environmental groups down in the California
3 desert. And they were successful in getting an
4 injunction. And rather than having that stop all
5 actions down there, we went and negotiated a
6 settlement agreement with the judge. And that has
7 imposed a workload on us.

8 The Forest Service has things in Sierra
9 Nevada framework.

10 However, we can work around it because
11 like Nancy was talking about, the federal agencies
12 have the abilities to do cost recovery, or in the
13 case of the Forest Service, collection agreements,
14 where we can go to the proponent and say, if you
15 put money up front we can then use that for our
16 processing. So we can either go hire some more
17 staff, or go and hire outside consultants.

18 So we do have that as a tool available
19 to us. But we just wanted to also point out that
20 while we are sympathetic to the need of expedition
21 here, we also have these other workloads that we
22 have to be working with.

23 MR. HAWKINS: One of the other things we
24 can also do is to have the proponent conduct the
25 studies under the supervision of our agency

1 specialist, our agency wouldn't have to do the
2 studies. And that, a lot of times, saves -- saves
3 time.

4 MR. MARTI: And then one other thing
5 that we have found in our joint reviews with both
6 the state -- and Nancy touched on this in her
7 presentation, is the advantages of using MOUs.
8 Because it very clearly spells out the roles and
9 responsibilities.

10 And if the CEC feels that that would be
11 something the federal and the state agencies need
12 to look at, we would be more than willing to sit
13 down with them, develop an MOU on how we could do
14 expediting of the permit review and decision
15 documents.

16 We'll entertain any questions that you
17 have at this time.

18 PRESIDING MEMBER LAURIE: Well, on the
19 issue of workload, we understand that. When we
20 first started getting into crunch time, probably
21 two years ago, the Energy Commission process was
22 looked upon as the Energy Commission's problem.

23 I think all state agencies now
24 understand that the Energy Commission's process is
25 the state's process. It's not the Energy

1 Commission's process.

2 I think the cooperation among all state
3 agencies today is really quite excellent. And
4 these folks understand what the priorities are as
5 much as the Energy Commission does.

6 We understand that with the federal
7 agency your priorities are different. And we
8 respect that. And I can only tell you what I hear
9 from the staff, and that is a continuing deep
10 appreciation over the time that you all have been
11 willing to give to our priorities.

12 And we recognize that effort.

13 Chris.

14 MR. MARTI: Well, thank you. We share
15 your problem because unfortunately we get our
16 electricity the same way you do. And I've gone
17 home, and my house, every clock in my house was
18 flashing red, which meant I was a victim of a
19 rolling blackout. So I'm --

20 PRESIDING MEMBER LAURIE: Well, just --

21 MR. MARTI: -- this summer.

22 PRESIDING MEMBER LAURIE: -- think
23 what's going to happen if your sense of
24 cooperation diminishes.

25 (Laughter.)

1 MR. MARTI: I think it's very clear, the
2 President has directed federal agencies to do
3 everything that we possibly can to work with the
4 state on this.

5 And unfortunately I think everyone's
6 beginning to realize it's not just a California
7 problem. It's going to be a problem throughout
8 the west. And I think that's where it's important
9 to have people like Nancy's agency involved,
10 because they can give us more of a regional
11 perspective.

12 PRESIDING MEMBER LAURIE: And, in fact,
13 it is not only a western problem. There are many
14 States of the Union that, in fact, are on the
15 edge. They just haven't been in the headlines,
16 but they are about to be.

17 Chris.

18 DR. TOOKER: Yes, thank you,
19 Commissioner Laurie. I would just like to say
20 that the Commission Staff, as well, has spent a
21 lot of time developing MOUs, and has recognized
22 benefits of those. And we're continuing to do
23 that, not only with state agencies, but moving
24 towards doing that with more federal agencies.

25 And that, as well, I think helps in the

1 resource issue, to the extent that you have an
2 understanding about levels of commitment and
3 expectation to meet your joint needs.

4 The next person we have to make a
5 presentation is Stephen Quesenberry from the
6 California Indian Legal Services. Perhaps to give
7 a little different perspective on permitting
8 requirements from the standpoint of tribal lands
9 siting.

10 PRESIDING MEMBER LAURIE: Thank you, is
11 it Stephen or Stephen?

12 MR. QUESENBERRY: It's Stephen.

13 PRESIDING MEMBER LAURIE: Stephen.
14 Thank you, sir.

15 MR. QUESENBERRY: Before launching into
16 a discussion of some of the considerations in
17 siting energy facilities on Indian lands, I'd just
18 like to speak for a moment about the numbers of
19 tribes in California.

20 There are 109 federally recognized
21 tribes in California. That's tribes that have a
22 government-to-government relationship with the
23 United States.

24 The size of the Indian landbase in
25 California, the total landbase is somewhere in the

1 neighborhood of about half a million acres. And
2 the individual reservations and rancherias range
3 in size from less than 50 acres, to more than
4 100,000 acres.

5 And many of those landbases are what is
6 termed checkerboarded. That is, they have within
7 their boundaries both tribal trust lands, in some
8 cases, individually allotted trust lands, and fee
9 lands owned by, maybe owned by the tribe in fee;
10 maybe owned by nonIndians in fee.

11 MS. TOWNSEND-SMITH: What's that term?
12 You said fee?

13 MR. QUESENBERRY: Fee. Like a fee
14 simple absolute.

15 MS. TOWNSEND-SMITH: Okay.

16 MR. QUESENBERRY: I think that's what it
17 refers to generally.

18 PRESIDING MEMBER LAURIE: Your office,
19 is that a federally funded office?

20 MR. QUESENBERRY: We receive some of our
21 funds from the federal government; some from the
22 state; and then we also are retained directly by
23 tribes, as well. We receive some funding to
24 provide free legal services to indigent tribes and
25 individual Indians.

1 PRESIDING MEMBER LAURIE: Okay.

2 MR. QUESENBERRY: Also, with respect to
3 tribal governments, I'd like to talk just briefly
4 about the decision making process.

5 With many tribes the tribal council,
6 under their constitution, has delegated authority
7 by the people, by the tribal members, to make
8 final decisions relating to the reservation
9 environment.

10 But there are a significant number of
11 California tribes that operate on what is termed a
12 general council governing concept. And that means
13 that any major decisions made by the tribe go back
14 to the people, to the entire tribe for decision.

15 I mention that because that can
16 sometimes delay decision making within the tribe.

17 With those introductory comments, I'd
18 like to just start with kind of a general
19 statement that underlying the issue of what
20 approvals are required for siting energy
21 generation facilities is a question of
22 jurisdiction.

23 That is, what entity or entities have
24 authority to license and regulate, and under what
25 circumstances. Because, as I just mentioned,

1 there could be a multiplicity of fact situations
2 involving Indian lands, where the jurisdictional
3 framework may change or be modified based on
4 whether the tribe is the developer, whether the
5 development is occurring on tribal land, or on fee
6 land. Whether there is federal funding involved,
7 or exclusively tribal private funding.

8 All of these could change the
9 jurisdictional framework. That is, what laws come
10 into play. And I'll talk a little more about that
11 in a minute.

12 And I don't want to go into a detailed
13 discussion of the case law, other than to say that
14 the general principle is that in the absence of
15 express Congressional authorization, state laws
16 generally do not apply, state regulatory laws
17 generally do not apply on Indian lands.

18 But, and the big but there is based on a
19 number of Supreme Court decisions that have
20 qualified tribal sovereignty in certain
21 circumstances where the lands are fee lands, the
22 activities may involve nonIndians, there may be
23 significant off-reservation impacts of on-
24 reservation activities, et cetera.

25 So, it's a complicated -- the point I

1 wanted to make is that the jurisdictional
2 framework is complicated. It's not a settled
3 regulatory framework, though there are certain
4 aspects of it that are settled.

5 So, the first approach in looking at
6 siting of generation facilities on Indian lands is
7 to understand that one, there is a sovereign
8 entity there, the tribe, itself, that has a unique
9 status under federal law.

10 But, also has a unique status with
11 reference to the federal government. And that's
12 very important because the federal government, in
13 implementing federal law, has to do so consistent
14 with its trust responsibility to the Indian
15 tribes.

16 Especially if the federal decisions or
17 policies in some way impact on tribal interests or
18 resources. Which would be the case if you're
19 talking about siting facilities on an Indian
20 reservation that required some form of federal
21 approval.

22 Having just talked in very general terms
23 about the jurisdictional framework, one way of
24 addressing or expediting the siting of generation
25 facilities on Indian lands is to step back from

1 the complicated jurisdictional issues, and focus
2 primarily on interests, and look at the potential
3 for inter-governmental cooperation.

4 I've been working in the area of federal
5 Indian law in California for a couple of decades.
6 And I know that under the current Administration
7 there's been a dramatic change, current state
8 administration, dramatic change in the approach to
9 dealing with tribal governments.

10 And I'm not just speaking in terms of
11 the gaming issue, but on broader issues. And that
12 is to recognize that there is a -- that the tribes
13 do have sovereignty within their lands and over
14 their people, and that there's a need to, in many
15 of these areas, especially environmental
16 regulation, that impacts both reservation and off-
17 reservation areas, to come to some resolution of
18 the jurisdictional issues without litigation.

19 And I did look at a draft MOU that was
20 prepared by Energy Commission Staff, and I think
21 it's really a good step towards doing that. It's
22 an inter-governmental MOU that includes federal
23 agencies, the tribe, as well as the state, itself.

24 I mention the relationship between the
25 federal government and tribes as something that is

1 very important to understand. And that
2 relationship actually, and the obligations of that
3 relationship are manifested mainly through a
4 federal tribal consultation process.

5 And that process, in some cases,
6 actually written into federal law. And in other
7 cases is included in orders, such as secretarial
8 order on the Endangered Species Act and the
9 obligation to consult with tribes.

10 In executive orders issued by the
11 President, which direct federal agencies to
12 consult with Indian tribes with respect to
13 policies or actions that may impact tribal
14 interests; with respect to potential impacts of
15 federal actions on sacred sites and cultural
16 resources; and in other areas.

17 So when the state sits down in a room
18 with a tribe and the federal government, there's
19 an interesting dynamic going on. It's not three
20 satellite governments sitting there, it's three
21 governments, but two of them are linked, the
22 federal government and the tribes, by this trust
23 responsibility.

24 And the federal government may have --
25 owe obligations under that to the tribe. They do

1 owe obligations under that to the tribes that are
2 totally unique in our legal system. And that
3 would not be obligations that are generally owed
4 to other entities or individuals.

5 And the reason I belabor that a little
6 bit is because a lot of people don't understand
7 that. And they somehow, sometimes when they see
8 it, they think that there's something unlawful or
9 illegal going on by this dialogue that's going on
10 on the side between the federal agency and the
11 tribes.

12 MS. TOWNSEND-SMITH: Well, let me ask
13 you a quick question. So, if a tribe decides to
14 put a power plant on a reservation, would the
15 tribe automatically be obligated to have the
16 project reviewed under NEPA?

17 MR. QUESENBERRY: Not automatically. It
18 would depend on the situation. But I can say
19 this, that I was trying to, in my own mind, think
20 of a hypothetical scenario where that action would
21 not require some form of federal approval. And
22 it's hypothetically I think you could. You could
23 have a tribe that was developing it with its own
24 resources on tribal trust land.

25 That tribe had authority through the EPA

1 to set water quality standards and air quality
2 standards. So it was regulating those two areas.
3 And there was no federal action to trigger NEPA.
4 That's the real issue, though.

5 In most cases you're going to have some
6 federal involvement that triggers NEPA. And in
7 many cases, well, I shouldn't say in many, not in
8 California yet. But, it's beginning to occur.
9 The tribes are developing their own comprehensive
10 environmental laws, because they have an interest
11 in insuring that that environment that they live
12 in is protected.

13 And in some cases, have a much stronger
14 interest, because they can't destroy those
15 resources there and go somewhere else.

16 MS. TOWNSEND-SMITH: Well, what
17 happens --

18 MR. WILSON: They live there. It's
19 their homeland.

20 MS. TOWNSEND-SMITH: Okay, well, what
21 happens when you build a project and say you have
22 an air quality impact that is not on tribal land,
23 but it's a impact on another area?

24 MR. QUESENBERRY: Well, again that
25 raises, I'm not an expert on the air quality

1 issues, but I can say that off-reservation impacts
2 raises a question of whether the state has an
3 interest that it is entitled to protect.

4 And I think that, you know, I would say
5 that if there were significant off-reservation
6 impacts, certainly the state has an interest that
7 it should be able to protect in some way.

8 The best approach would be to address
9 that without litigation, without getting into a
10 fight over whether the state can then reach into
11 the reservation and regulate that power plant as a
12 means of reducing, eliminating or mitigating the
13 off-reservation impact.

14 PRESIDING MEMBER LAURIE: There's no
15 central tribal authority that has tribal consent
16 or jurisdiction to reach agreement with the Energy
17 Commission on a particular process, is that a
18 correct statement?

19 MR. QUESENBERRY: That's correct.

20 PRESIDING MEMBER LAURIE: So it has to
21 be done case-by-case?

22 MR. QUESENBERRY: Case-by-case. And
23 that is one of the, as I say, we're in kind of a
24 new era, I think -- I hope, of tribal/state
25 relations. And that kind of concept is one that

1 we may see developed in the coming years. Where
2 you have a large number of tribes, some of them
3 with very limited resources, and yet, together,
4 you know, I mean potentially even a small tribe,
5 if it developed a plant, could have a significant
6 impact, you know, on both that landbase, as well
7 as the surrounding communities.

8 But there is a necessity besides the
9 government-to-government relationships, in some
10 areas, subject areas, to have some type of central
11 coordinating body.

12 And because we are a huge state with a
13 large number of tribes, it's been difficult to
14 develop that kind of an approach. Thought it is
15 happening in the area of Forestry, there is a
16 statewide council of tribes that deal with
17 forestry issues And I think it's something that
18 could be developed in the area of power
19 generation, as well.

20 I'd like to just mention some of the
21 potential approvals, or compliance issues that
22 we've come up with respect to siting facilities on
23 tribal land.

24 NEPA may very well apply if there's
25 federal action. And that federal action could

1 take different forms with respect to tribes.

2 If the tribe had a private developer
3 that was going to be using tribal lands for the
4 development of a project, there's a specific
5 requirement under federal law that contractual
6 agreements relative to tribal lands have to be
7 approved by the Secretary of the Interior. And
8 that's been deemed as a triggering mechanism for
9 purposes of NEPA.

10 And generally I mention that, a general
11 principle is that state laws do not apply,
12 generally speaking, on Indian reservations unless
13 Congress expressly says they'll apply.

14 The other principle is that tribes are
15 generally subject to federal law. So that if you
16 have the Clean Air Act, the Clean Water Act,
17 tribes are subject to those laws. But within
18 those laws you have specific delegations of
19 authority to the EPA to treat tribes under certain
20 circumstances as they would state entities for
21 purposes of setting air quality and water quality
22 standards.

23 Now, the tribes have to meet minimum
24 criteria to be able to do that. And we don't have
25 a large number of tribes in California that have

1 met those criteria.

2 So, in the absence of that, generally
3 the EPA would be in a position to set the standard
4 for the tribal lands.

5 Other federal statutes that may come
6 into play are the Native American Graves
7 Protection and Repatriation Act, which applies
8 both to federal and tribal lands. And if there's
9 any excavation involved that would impact on
10 burial sites and other items, other cultural
11 resources, if it's tribal land, it would also
12 require the consent of the tribe.

13 The National Historic Preservation Act,
14 within that statute tribes are also, it's possible
15 for tribes to function as the state historic
16 preservation office does. That is there would be,
17 a tribe could form a tribal historic preservation
18 office, and essentially take over the review
19 functions that the state would generally have
20 under that federal statute.

21 If a lease is involved, again we're
22 getting into the federal trust responsibility.
23 The government has obligations to protect Indian
24 trust resources. So if the tribe is leasing their
25 lands for development, federal Indian leasing laws

1 apply, which require federal approval and certain
2 minimum conditions within the leases.

3 If -- and with respect to rights-of-way
4 over tribal lands, both federal approval would be
5 required for those rights-of-way, both new rights-
6 of-way or expansion of existing rights-of-way.
7 And also if it's tribal land, tribal consent would
8 be required, as well. So you get into both the
9 federal approval process, as well as the tribal
10 approval process for rights-of-way.

11 And there are comprehensive regulations
12 in both of those areas under Title 25 of the Code
13 of Federal Regulations, for both the leasing and
14 the grant of right-of-way over Indian lands.

15 As I mentioned before, because of the
16 interaction on Indian reservations with respect to
17 environmental laws, involving essentially three
18 different governments, I think it is an excellent,
19 or I think it would be an excellent approach to
20 look at the possibility of MOUs, intergovernmental
21 MOUs.

22 And that way you would bring to the
23 table the entities that have the interests, the
24 stakeholders. And also it would be a way of
25 focusing the process for expediting environmental

1 review of the siting process.

2 The one resource that I highly recommend
3 is one that was put out by the -- it's a
4 publication of the Environmental Protection
5 Agency, and it was prepared for them by the
6 National Environmental Justice Advisory Council,
7 Indigenous People Subcommittee.

8 And it's a guide on consultation and
9 collaboration with Indian tribal governments, and
10 the public participation of indigenous groups and
11 tribal members in environmental decision making.

12 And it compiles within this very short
13 booklet some of the major federal authorities that
14 require tribal consultation involving
15 environmental issues.

16 Beyond that it's also a relatively good
17 summary of the jurisdictional framework in Indian
18 county. And actually goes into some detail on the
19 historic development of the relationship between
20 the EPA and Indian tribes.

21 The EPA, I think, has taken the lead,
22 among the federal agencies, in developing a very
23 comprehensive federal Indian policy and in working
24 with tribes in developing the infrastructure
25 necessary to regulate on-reservation resources,

1 particularly with respect to water and air
2 quality.

3 I think that pretty much concludes my
4 comments. If you have any questions I'd be glad
5 to respond.

6 PRESIDING MEMBER LAURIE: Thank you,
7 Stephen, very much. That's been very helpful.
8 Chris.

9 DR. TOOKER: Yes, I do have one followup
10 question. If I could pose an example of where
11 there was, say, a large stationary source built on
12 a reservation, and that Indian tribe did not have
13 any air quality standards or environmental
14 protection standards developed.

15 What kind of permitting would be
16 required for that? Let's say if it was part of
17 our process, would EPA be the permitting agency?

18 MR. QUESENBERRY: I think on the air
19 quality issues, EPA would be. With respect to the
20 issue of what entity, and we're talking about
21 tribal land?

22 DR. TOOKER: Yes.

23 MR. QUESENBERRY: What entity would have
24 jurisdiction over the actual siting, that's a good
25 question. Because jurisdiction is something that

1 you either have or you don't have.

2 And that's one of the potential problems
3 today with the lack of development of legal
4 infrastructure within tribes for regulation of
5 environmental issues, is that you may actually
6 have a type of jurisdictional vacuum involved.

7 DR. TOOKER: So that we might have to
8 craft in the MOU some understanding of the
9 structure that we'd have to develop to issue a
10 state license which was kind of part of a state/
11 federal lands permit?

12 MR. QUESENBERRY: You would probably
13 have to address it through the MOU, but as I
14 mentioned before, it's very hard for me to think
15 of a situation involving Indian lands where you
16 would not have some form of trigger for at least
17 NEPA to apply.

18 But with respect to the siting or
19 licensing of the project, that would be where you
20 may have a, you just may have a gap.

21 DR. TOOKER: Interesting. Thank you.

22 PRESIDING MEMBER LAURIE: Thank you.
23 Monica and Rick.

24 MS. SCHWEBS: Thank you, Commissioner
25 Laurie. Rick and I were both going to present

1 today, but Rick's voice has given out on him, so
2 he's lending moral support, and I'm lending voice.

3 (Laughter.)

4 MS. SCHWEBS: At any rate, I just wanted
5 to take a few minutes to tell you about some
6 things that staff has been up to.

7 As you may have heard from a few people,
8 we had some pre-meetings with various federal
9 agencies that were very well attended. They were
10 designed to let the people know what's happening
11 in the energy area at the Energy Commission, and
12 also to inform them about the transmission and
13 natural gas lines that we know about. Get them
14 thinking about how we move ahead together.

15 But, more importantly, to brainstorm on
16 ways to improve our processes. And we focused on
17 Endangered Species Act matters in particular.

18 So, we came up with -- we meaning Rick
19 and I -- came up with a list of recommendations.
20 Some of them you've already heard from various
21 people that have spoken today. But we wanted to
22 have a chance to let you know, you know, what our
23 thinking was and the basis of these discussions.

24 And also to, again, thank the various
25 agencies that participated, and that was Fish and

1 Wildlife Service, National Marine Fisheries
2 Service, Western, Nancy has been very helpful.
3 She attended all of our sessions, actually. As
4 well as Forest Service and BLM. EPA was also on
5 the phone. And the Public Utilities Commission,
6 actually, was on the phone for one of our
7 sessions, as well.

8 And several staff members participated
9 in various sessions, so we had a good cross-
10 section. But it was all lower level staff just
11 trying to figure what to do.

12 Anyway, this is what we came up with.
13 As you've heard from many people already there is
14 an acute problem with the resources available to
15 the federal agencies, and in particular Fish and
16 Wildlife Service and the National Marine Fisheries
17 Service.

18 And I don't think they fully explained
19 to you the extent of their problems. The key Fish
20 and Wildlife Service office here in the state is
21 at a third of its authorized staffing level.
22 There's a hiring freeze, at least at the
23 management level, at Fish and Wildlife Service.
24 There's a completely hiring freeze at NMFS.

25 They have no ability to get consultant

1 dollars. They have no ability to pass on costs,
2 not those two offices. Some of the other federal
3 agencies have mentioned that they do, and they're
4 starting to think about ways to potentially help
5 them out with some of their abilities to get
6 moneys from applicants. But that's just in the
7 works at this point in time.

8 With other agencies, there has been no
9 effort thus far to increase the amount of
10 available appropriations to meet the needs that we
11 see coming, both for power generation and the
12 transmission and natural gas right-of-way issues
13 that need to -- these agencies need to address
14 collectively very soon, too.

15 So, we wanted to recommend to you that
16 you actually make a formal request to Washington
17 on behalf of the Energy Commission, perhaps it's
18 something the Public Utilities Commission would
19 want to be involved with, to at a minimum lift the
20 hiring freezes. Which is something that we think
21 they would be willing to do.

22 But beyond that, to make available the
23 resources to those agencies to be able to meet the
24 needs that they have.

25 If that doesn't work, we have some

1 backup recommendations. Caltrans has actually
2 taken the step of getting state money to fund
3 people, as you heard from Mr. Winters, which is a
4 possibility.

5 There's another option that was
6 mentioned actually by National Marine Fisheries
7 Service, there's a portion of the federal
8 regulations that permits a designation of a
9 nonfederal lead agency for Endangered Species Act
10 compliance.

11 It's not clear to me that it's ever been
12 used. But, at least by the Fish and Wildlife
13 Service, apparently National Marine Fisheries
14 Service has done more of this.

15 In any case, it would potentially permit
16 us to do an agreement with the federal government
17 to take over more of the staff work, or at least
18 fund some of it through the Energy Commission's
19 consultants.

20 So those are all options on the table,
21 but we really see that as a critical need, and
22 something that the Commission hopefully can
23 address right away.

24 PRESIDING MEMBER LAURIE: Go ahead and
25 put that discussion on a future siting Committee

1 agenda.

2 MS. SCHWEBS: All right, great. And
3 we'd appreciate that.

4 We, at the Energy Commission, as well as
5 I'm sure the federal agencies, since I think
6 everyone wants to be of help, but the reality of
7 the situation is that it's difficult.

8 Anyway, we have some process
9 recommendations, too. You know, we've talked a
10 lot about streamlining and some of this has come
11 out today, as well.

12 But let me reiterate some of those
13 points. And maybe state them a little bit
14 differently from some people.

15 One thing that we had thought about is
16 that it really would be a good idea to have some
17 federal liaisons identified in each of these
18 agencies, as a key person on Energy Commission
19 projects.

20 And the purpose of that would be, at
21 least in part, to facilitate this early
22 involvement. And many people have talked about
23 the need to get the federal agencies involved
24 earlier in the process than they are now.
25 Hopefully in prefiling.

1 And to the extent to which we have
2 prefiling meetings, we'd strongly recommend that
3 people from federal agencies be involved, as
4 appropriate, in those prefiling meetings, as well,
5 in order to accomplish several purposes.

6 The most important being to identify
7 early the likely problems, to be able to
8 potentially reshape projects that -- still
9 possible to mold them, to avoid those problems,
10 and thereby expedite the process down the line.

11 We also wanted to get prompt
12 identification of lead agencies and federal nexus,
13 probably by the time an application comes in the
14 door here, you know, make it part of our process
15 in the case where there is going to be clear
16 federal involvement. We have a list of those
17 agencies in the AFC.

18 Make sure that the federal agencies
19 coordinate among themselves to get that lead
20 agency identified.

21 They actually told us that can be a
22 problem in some cases where, you know, there are
23 bits and pieces of federal involvement all around,
24 but it takes them awhile, sometimes to get to the
25 point where they have that one lead agency

1 identified that will go forward with the project.

2 And if that were made part of our
3 process, to ask the federal agencies to identify
4 their lead promptly, through this federal liaison,
5 it may very well facilitate the federal process
6 moving forward.

7 And, similarly with Endangered Species
8 Act matters. One critical determination is what
9 the federal nexus is for Fish and Wildlife Service
10 and National Marine Fisheries Service to get
11 moving.

12 And sometimes it's taken quite awhile to
13 actually identify the federal nexus. Susan Jones
14 was telling me that she spent a lot of time trying
15 to identify the federal nexus, and some cases
16 actually calling up agencies trying to convince
17 them that they really had a federal nexus, so that
18 they could get the ESA work on a faster track.

19 And again, that's the kind of thing
20 where the Energy Commission could just request
21 from the federal liaisons that they identify any
22 federal nexus promptly to the wildlife agencies.

23 Next, coordinated NEPA and CEQA review.
24 We really love what Nancy's been doing. She, I
25 think, has developed a process that all federal

1 agencies hopefully can benefit from. And in
2 particular, her MOU for Blythe is, I think, a good
3 model. Probably can be -- will have to be
4 tailored in many cases.

5 But to have an MOU that the Commission
6 has looked at and, you know, is generally
7 comfortable with is certainly going to expedite
8 joint NEPA and CEQA review. And we really
9 appreciate Nancy's help, and we've already used
10 her offline a lot to discuss things with other
11 agencies. So she's become a contact person for us
12 in a lot of ways in helping federal agencies
13 through this process.

14 Next we've wanted to get federal
15 agencies invited to more Energy Commission project
16 meetings. And we're talking internal staff
17 meetings, too.

18 Obviously, it's not always appropriate
19 for, you know, all sovereigns to be there, but in
20 most cases all sovereigns should be there. And
21 the coordination inherent in actually being at
22 critical meetings will help facilitate the process
23 and lead to less duplication of effort.

24 And then finally, a state law -- that we
25 think needs to get addressed. The DFG take

1 permit, at this point in time, is occasionally
2 delayed because the Department of Fish and Game
3 needs to have a CEQA document on which to issue
4 that take permit.

5 And they, like many local agencies, have
6 been uncomfortable with using the staff
7 assessment, since there's a decision point at the
8 end of our process. And my understanding is
9 actually there's legislation at this point to
10 correct that problem.

11 But that's something that we think would
12 facilitate the Endangered Species Act side of
13 this. And we can talk further about that, too, if
14 you are interested.

15 Finally -- well, actually it's not
16 finally, we have two more categories. Targeted
17 planning recommendations and long-term planning
18 recommendations.

19 By targeted planning we mean there are a
20 few things that we thought about where there are
21 clearly delays caused in our process, and that we
22 ought to really sit down and try to come up with
23 the answers to those problems.

24 And they're limited. At this point in
25 time we have two examples of things that we know

1 cause delay, or it would be helpful to put some
2 staff on to fix the problem.

3 One is with the 316B reports for the
4 facilities that have cooling water intake
5 structures that need to be mitigated under 316B of
6 the Clean Water Act.

7 There we've had numerous problems in the
8 coastal cases with getting the baseline data in
9 order to permit the review process to go through
10 here rapidly.

11 And we thought maybe if we had staff
12 just write out some guidance for applicants on
13 exactly what they need to walk in the door on
14 those coastal projects, where they will be having
15 to get 316B authorization, that that would
16 facilitate the process.

17 The problem is there's a gap really in
18 federal law on this matter. It's pretty much left
19 case-by-case at this point in time. The proposed
20 regulations at the federal level that would
21 clarify it a little bit, but even those will not
22 completely clarify what the Energy Commission will
23 need in those cases.

24 So, it looks like you had a question.
25 Did you want to --

1 PRESIDING MEMBER LAURIE: No, I have
2 another meeting starting at 3:00. And --

3 MS. SCHWEBS: Oh, we got to move, okay.

4 PRESIDING MEMBER LAURIE: -- I want to -
5 - first of all, everything that you're going over
6 here, you'll be presenting to the Siting
7 Committee.

8 MS. SCHWEBS: Well, yeah, that's news to
9 me, but that's fine.

10 PRESIDING MEMBER LAURIE: Yeah, well,
11 it's news to you as of now.

12 MS. SCHWEBS: Yeah, okay.

13 PRESIDING MEMBER LAURIE: And I
14 understand that. And I just want to make sure
15 that we have an opportunity for public questions
16 or public input.

17 So, let me interrupt you at this point,
18 and see if there's any questions or comments from
19 any member of the public regarding anything we've
20 heard up to this point.

21 Yes, ma'am. Come on up.

22 MS. RED-HORSE: I can just speak from --

23 PRESIDING MEMBER LAURIE: No, you can't.
24 Hi, how you doing?

25 MS. RED-HORSE: I'm good, thank you. I

1 am familiar somewhat with the emergency crisis --

2 PRESIDING MEMBER LAURIE: Could you
3 identify yourself, please?

4 MS. RED-HORSE: Oh, yeah, I'm Valerie
5 Red-Horse. I'm with Native Nations Securities.

6 We have talked to some of the folks in
7 the CEC siting office about the emergency crisis
8 conditions that would allow for a 21-day
9 permitting, and 7-day interconnection study.

10 And yet, after listening to everything
11 presented today, it almost seems like that
12 scenario can't exist.

13 Has that happened? Is that realistic?

14 PRESIDING MEMBER LAURIE: Yes.

15 MS. RED-HORSE: Okay, so we're listening
16 today to a lot of agencies that have usually long-
17 term processes, and everyone's kind of willing to
18 work --

19 PRESIDING MEMBER LAURIE: What's
20 happened in the 21-day process is applications are
21 being submitted on sites that have been pretty
22 much re-examined for environmental impacts. And
23 pretty much a determination has been made that
24 there aren't any.

25 Upon an initial review, if there are, it

1 kicks it out of the 21-day process.

2 And so it's a very limited set of pre-
3 identified areas, for the most part. I think
4 there are some exceptions to that.

5 Mr. Tooker is an expert on that, because
6 he has his name all over the documents.

7 (Laughter.)

8 DR. TOOKER: The only thing I might
9 mention to add to that is those sites have been
10 screened, not only for environmental concerns, but
11 for adequate infrastructure in terms of
12 transmission and gas lines, or water lines.

13 Because we could not accommodate the
14 process we've talked about here today through the
15 emergency process, so we have selected sites that
16 have that infrastructure.

17 MS. TOWNSEND-SMITH: And we actually
18 have two projects inhouse now. We had an
19 informational hearing and site visit last Thursday
20 in San Diego. And today we're actually looking at
21 another project in the Palm Springs area.

22 So the process has actually started.

23 PRESIDING MEMBER LAURIE: Okay. Monica
24 and Rick, what I will ask you to do, because we
25 need to know your recommendations as being

1 presented today, is get it on the next Siting
2 Committee meeting. And we'll give you all the
3 time you need.

4 MS. SCHWEBS: Okay. Thank you.

5 PRESIDING MEMBER LAURIE: As to our
6 panelists, very important, all the issues that are
7 raised, and we do really appreciate your efforts.
8 You're an essential part of the deal.

9 So, I thank you. And with that, the
10 meeting will stand adjourned.

11 (Whereupon, at 3:00 p.m., the workshop
12 was adjourned.

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Workshop; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop, nor in any way interested in outcome of said workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of April, 2001.

VALORIE PHILLIPS

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